DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 09-00345
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

July 15, 2010

Decision

HARVEY, Mark, Administrative Judge:

Applicant has a lengthy history of alcohol consumption. Although he was only convicted of one charge of driving while intoxicated (DWI), he had alcohol-related arrests or accidents in 1972, 1991, 1994, 2000, 2007, and 2008. He received 13 hours of alcohol-related evaluation and counseling in 2007. In 1998, Applicant was convicted of possession of a concealed firearm. Applicant mitigated security concerns arising from his criminal conduct; however, he did not mitigate alcohol consumption concerns. Eligibility for access to classified information is denied.

Statement of the Case

On September 19, 2002, Applicant submitted a security clearance application (2002 SF-86). (Government Exhibit (GE) 2) On October 5, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) (2008 SF-86). (GE 1) On August 6, 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.

The SOR alleges security concerns under Guidelines G (alcohol consumption) and J (criminal conduct). (Hearing Exhibit (HE) 2) 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 August 27, 2009, Applicant responded to the SOR allegations. (HE 3) Applicant requested a hearing before an administrative judge. On February 28, 2010, Department Counsel announced he was ready to proceed on his case. On March 12, 2010, DOHA assigned Applicant's case to me. On April 16, 2010, DOHA issued a hearing notice setting the hearing for May 3, 2010. (HE 1) Applicant's hearing was held on May 3, 2010.

At Applicant's hearing, Department Counsel offered 29 exhibits. (Tr. 27; GE 1-29) Applicant objected to the admissibility of any exhibits that were generated more than seven years ago because some questions on his SF-86 limited the scope of the information requested to seven years. (Tr. 26-27) Additionally, Applicant's Top Secret clearance was approved in 2002, and he asserted that any derogatory information from before 2002 was already deemed insufficient to be the basis to deny his access to Top Secret information. (Tr. 26-27) I overruled Applicant's objections; however, I agreed to apply his comments to the weight given to GE 1-29. (Tr. 28) I admitted the hearing notice, the SOR, and the response to the SOR. (HE 1-3) On May 10, 2010, I received the transcript. The record was held open until May 13, 2010, to permit Applicant to submit additional evidence. (Tr. 20, 110) After the hearing, Applicant submitted a statement about completion of an alcohol-related counseling program in 2007. (AE A) Department Counsel had no objection to my consideration of AE A, and I admitted AE A. (HE 4)

Findings of Fact[1]

In Applicant's response to the SOR, he admitted parts of several of the SOR allegations, and then provided extensive explanations. (HE 3) 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 55-year-old general foreman in the carpentry field. (Tr. 10, 32; GE 1)[2] Applicant did not graduate from high school and he does not have a graduate equivalency diploma. (Tr. 10-11) He has not attended college. (Tr. 11) He had a child when he was 17 and was unable to continue with high school. (Tr. 24) He married in 1970 and was divorced in 1996. (Tr. 97) He has three children who are 21, 27, and 39. (Tr. 32, 98) He has never served in the military. (Tr. 33) He has worked on "stuff" at the

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

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

White House and other places. (Tr. 97) He said he had a letter of commendation from President Clinton, and I asked him to provide a copy of the letter after the hearing. (Tr. 97) However, he said he was unsure whether he could find it. (Tr. 97) He did not provide the letter from President Clinton after his hearing. (Tr. 97) He stated that he can completely build a 14-story building, a bridge, a clean room, or a bomb-proof building from the ground up by managing a construction crew. (Tr. 98-99)

Alcohol consumption

Applicant has consumed alcohol since 1971 (when he was 17), and he continues to consume alcohol. (Tr. 33; GE 3 at 10) He drinks from two to about six beers at a sitting. (Tr. 33; GE 3 at 10; GE 7 at 8-9) During the wintertime, he might not drink any beer at all; however, he drinks more beer during the summer. (Tr. 33, 36) His alcohol consumption does not follow a pattern. (Tr. 36) He can drink six beers and still does not have a problem functioning; however, he recognized he would be over the legal limit for driving. (Tr. 34) He did not believe that he consumed six beers and then drove a motor vehicle in the last two years. (Tr. 34-35) Two years ago, Applicant was diagnosed with diabetes and now he must reduce his alcohol consumption. (Tr. 35)

In 1972, the police stopped Applicant for speeding. (Tr. 65-66) Applicant's boss had left two beers on the backseat. (Tr. 66) Applicant was not yet 21 years old, and was underage to possess alcohol. (Tr. 66) Although he may have consumed some beer earlier in the day, he denied that he had more than a remnant of one beer in his system when he was driving.[3] (Tr. 69) Applicant said the police officer was very aggressive and pushed Applicant, and then the police officer arrested him for driving under the influence of alcohol (DUI). (Tr. 70; SOR ¶ 1.g) The charge was subsequently dismissed. (GE 5)

In 1991, the police stopped Applicant for speeding. (Tr. 64) Applicant complied with the police request that he submit to a breathalyzer test. (Tr. 63) Applicant was charged with DUI. (Tr. 62; SOR ¶ 1.f) After a contested trial, he was found guilty of DUI and sentenced to a fine and probation. (Tr. 63-65; GE 7 at 4) He denied that he was actually intoxicated. (Tr. 63)

In January 1994, the police stopped Applicant for driving 80 miles per hour in a 50-mile-per-hour zone. (Tr. 56) Applicant did not think he was going that fast. (Tr. 56) Applicant was drinking alcohol while he was driving. (Tr. 57) He said he drank three beers at the most. (Tr. 58) Applicant claimed he passed the field sobriety tests even though the police reports say that he failed them. (Tr. 58, 60) The police report states Applicant had slurred speech, and a strong odor of alcohol. (Tr. 58; GE 17) Applicant claimed the police always indicate on their forms that there is a strong odor of alcohol, and bloodshot eyes. (Tr. 59) The police arrested Applicant for driving while impaired by alcohol. (Tr. 55; GE 17; SOR ¶ 1.e) He could not remember if the police offered him a breathalyzer test. (Tr. 61) If the police offered him a breathalyzer test, he would have asked for a lawyer to be present because if the suspect passes the test the police "just turn that meter up so they can get another DWI." (Tr. 61) The police report indicates

[3]He stated his breathalyzer result was below the legal limit. (GE 5 at 2)

Applicant refused a breathalyzer test and was very uncooperative at times. (GE 17) The 1994 charge was subsequently dismissed.

On January 27, 1998, Applicant was arrested and charged with second degree assault on January 26, 1998. (GE 19; SOR ¶ 2.a) On February 19, 1999, the charge was *Nolle Prosequi*. (GE 18, 21) His 1982 assault charge was also *Nolle Prosequi*. (GE 29) The assault charges were dismissed because Applicant's spouse admitted that he did not hit her, or because she did not support the prosecution of his case. (GE 7 at 6, 8)

Possession of a concealed weapon and failure to appear in 1998 and 1999 (SOR ¶ 2.b)

In 1998, the police arrested Applicant for having a concealed handgun[4] in his van. (Tr. 70) Although the weapon was legally registered, Applicant did not have a concealed weapons permit. (Tr. 70-71) His handgun was loaded. (Tr. 71) He wrote a letter to the judge and informed the judge that he would miss his court date. (Tr. 72) By the time the judge responded to Applicant's letter, Applicant had already left the country. (Tr. 73) He had a court date in January 1999; however, he was out of the country and missed his court date. (Tr. 71)

On August 23, 2002, Applicant was terminated from employment because of the pending firearm offense. (GE 7 at 8)

On December 2, 2002, Applicant said in a statement, "I was supposed to report to the police station upon my return to the US but my lawyer advised me not to because he wanted to continue the postponement. If needed for my clearance, I will convince my lawyer to take this action back to the court for a hearing." (Tr. 80; GE 7 at 5) At his hearing, Applicant said he did not turn himself in because it was not on his mind. (Tr. 78-79) Applicant admitted that he did not recall his lawyer saying he did not want Applicant to turn himself in to the authorities. (Tr. 81) He did not provide a credible explanation for why he alleged his lawyer told him not to turn himself in to resolve the arrest warrant. (Tr. 80-81)[5] In May 2003, Applicant was arrested for failing to appear for his court date. (Tr. 75) On July 31, 2003, Applicant was convicted contrary to his pleas of Handgun on Person, and he was sentenced to 60 days in jail (suspended), unsupervised probation for one year, a $200 fine, and $415 court costs. (GE 23, 27) Applicant's firearm was forfeited. (Tr. 83; GE 23)

[4]Applicant purchased a firearm because he was worried about a biker gang that had shot up his van. (Tr. 96)

[5]On October 28, 2008, Applicant told an Office of Personnel Management (OPM) investigator:

> Upon receiving the court date the [Applicant] wrote the judge a letter explaining that he had to move [out of the country for work]. The subject hired a lawyer . . . to handle this case, and they let the subject [leave the country for work] and put off his case until he returned. Once the subject returned from working [overseas] he attended his court date (date unrecalled) at the [court]. (emphasis added) (GE 3 at 8)

Applicant told the judge at his hearing that he was moving and he did not have any place to store his firearm. (Tr. 77) Department Counsel confronted him at his hearing with his 2008 SF-86 which indicated he did not move in 1998. (Tr. 78) Applicant explained he was staying with several friends "off and on" and he was going through a divorce.[6] (Tr. 78) He did not have a permanent fixed address at that time. (Tr. 78)

In 2000, Applicant was in a car accident after consuming alcohol. (Tr. 54; SOR ¶ 1.d) He hit a parked vehicle. (GE 7 at 3) The police detained Applicant overnight because the police smelled alcohol on his breath. (Tr. 55; GE 7 at 3) Applicant paid $600 restitution for damage to a parked vehicle. (Tr. 55; GE 7 at 3)

Driving under the influence of alcohol (DUI) on July 16, 2007 (SOR ¶ 1.c)

On July 16, 2007, Applicant was drinking beer. (Tr. 45) He was unsure how many beers he drank; however, he believed it was three beers. (Tr. 45-48) He left the bar and was on his way home when he felt sick. (Tr. 46) He stopped his car at 11:30 pm. (Tr. 46) A police officer stopped behind Applicant's vehicle. (Tr. 47) Applicant said he told the police officer he was suffering from chest pains. (Tr. 48) The police officer did not believe he required medical assistance. (Tr. 49) He said he failed some field sobriety tests because of the chest pains. (Tr. 48, 51) He did not take a breathalyzer test because he wanted his attorney to be present. (Tr. 49) He explained why he did not trust breathalyzer tests, unless his lawyer is present. The police deliberately turn breathalyzer machines out of calibration to help prove people are DUI, and he wanted an attorney to be present to prevent police misconduct. (Tr. 50) Applicant claimed the police officer slammed him into a wall because he did not want him to get a lawyer. (Tr. 51) Applicant claimed the police officer lied at his trial about two of the field sobriety tests. (Tr. 53) Applicant pleaded not guilty. (GE 28) On April 9, 2009, the court adjudged court costs of $145 and "Judgment Stayed (Probation)." (GE 28)

Driving under the influence of alcohol (DUI) on July 6, 2008 (SOR ¶ 1.b)

On July 6, 2008, Applicant's son and his son's spouse were involved in an argument. (Tr. 37) His son's spouse went to a bar with a girlfriend. (Tr. 38) She called and asked Applicant for a ride because she had consumed too much alcohol to drive. (Tr. 38) Applicant picked her up at the bar, and while driving her home he made a U-turn on the road. (Tr. 39) A police officer pulled him over for crossing the center line. (Tr. 39) His daughter-in-law would not comply with the police officer's order for her to stay in the car. (Tr. 40) She argued with the police officer and then made a racial slur against the police officer. (Tr. 41) He arrested her. (Tr. 41) The police officer asked Applicant to do a field sobriety test. (Tr. 42) Applicant told the officer he had not been drinking, and he argued with the police officer about the necessity for a field sobriety test. (Tr. 42) Applicant denied that he had red, glassy eyes or that he stumbled when he exited the vehicle he was driving. (Tr. 44) The police officer arrested him and charged him with DUI. (Tr. 36, 42) Applicant denied that he had consumed any alcohol before the police

[6]Applicant stated his divorce was in September 1996 not in 1998. (Tr. 97; GE 7 at 2)

stopped him. (Tr. 37) The police asked Applicant to take a breathalyzer test. (Tr. 37) Applicant told the police he wanted to consult a lawyer before taking a breathalyzer test. (Tr. 42) The police officer tackled Applicant, beat his head on the floor, and threw him in jail. (Tr. 93) Applicant went to the hospital the next day, and his lawyer urged Applicant "to file things." (Tr. 93) However, Applicant did not pursue any actions against the police because he was worried about retaliation against his son and his son's wife. (Tr. 93) Applicant pleaded not guilty to DUI but guilty to negligent driving. (GE 28) Applicant's DUI offense was placed on the stet docket. (GE 28)

The police officer provided a six-page statement about Applicant's 2008 DUI arrest, and the arrest of Applicant's daughter-in-law. (GE 8) The police officer observed Applicant cross the center of the roadway several times. (GE 8 at 1) When the police officer approached Applicant, he observed that Applicant had reddened, glassy eyes. (GE 8 at 1) He smelled alcohol on Applicant's person. (GE 8 at 1) Applicant responded to his questions with slurred speech. (GE 8 at 1) When Applicant exited his vehicle, he stumbled and had difficulty maintaining his balance. (GE 8 at 2) The police officer asked Applicant if he had been drinking alcoholic beverages that evening, and Applicant remained silent. (GE 8 at 2) The police officer told Applicant that he wanted to evaluate him using a standardized field sobriety test. (GE 8 at 2) Applicant responded that he wanted a lawyer before he would take any test. (GE 8 at 2) The police officer arrested Applicant for DUI and took him to the police station. (GE 8 at 2) Applicant reiterated that he wanted his lawyer to be present when he participated in the breathalyzer. (GE 8 at 5) When Applicant was at the police station, he refused to give a clip board back to the police officer when requested. (GE 8 at 5) The police officer tackled Applicant, and Applicant was forced to the floor. (GE 8 at 5) Applicant announced that the police officer had assaulted him and Applicant said he would get the police officer fired. (GE 8 at 5) The police officer informed Applicant that the detention area is recorded by three cameras. (GE 8 at 5)

Applicant said he did not recall any additional DUIs or DWIs. (Tr. 84) Applicant did not believe he had a problem with alcohol. (Tr. 85) He did not think he had operated a motor vehicle after consuming more than six beers in the last five years. (Tr. 86) He could not remember driving a car with an open container of alcohol in the last two years. (Tr. 87) He said he has never been impaired by alcohol at work, and that alcohol consumption has never affected his work. (Tr. 89, 95)

Applicant received an alcohol-related evaluation in 1991. (Tr. 89) He said the 1991 program concluded he did not have a problem with excessive alcohol consumption. (Tr. 90) A written copy of the alcohol-related evaluation was not offered as a hearing exhibit.

From August 13, 2007, to November 7, 2007, Applicant attended a one-hour evaluation and 12 group, alcohol counseling sessions.[7] (AE A) Applicant "was cooperative and compliant throughout his stay at the [outpatient substance abuse

[7]Applicant did not disclose this alcohol-related treatment on his 2008 SF-86. *See* Section 25, GE 1.

treatment facility]." (AE A) Applicant said the outpatient substance abuse treatment facility did not find that Applicant had an alcohol problem. (Tr. 91) The letter from the outpatient substance abuse treatment facility did not include a diagnosis or prognosis. (AE A)

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 adjudicative guidelines. 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 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 concerns are under Guidelines G (alcohol consumption) and J (criminal 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."

One alcohol consumption disqualifying condition could raise a security or trustworthiness concern and may be disqualifying in this case. AG ¶ 22(a) provides, "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."

None of the other disqualifying conditions fully apply because Applicant did not have any alcohol-related incidents at work, he did not have a diagnosis of alcohol abuse or dependency, there was no evidence of binge-consumption of alcohol, and he did not violate any court orders concerning his alcohol consumption.

AG ¶ 22(a) applies. Applicant had alcohol-related arrests or accidents in 1972, 1991, 1994, 2000, 2007, and 2008. Of these six alcohol-related events, he was convicted once (of DWI in 1991).

"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.

None of the mitigating conditions fully apply. Applicant began consumption of alcohol at age 17, and he continued to consume alcohol with periods of abstinence of for the next 38 years. He did not acknowledge that he had a problem with excessive alcohol consumption. He completed 13 hours of alcohol-counseling in 2007. He did not receive a positive prognosis from a physician, who is a staff member of a recognized alcohol treatment program. He currently consumes alcohol. Despite some positive developments, his extensive alcohol-related driving problems continue to cast doubt on his current reliability, trustworthiness, or good judgment. Alcohol consumption concerns are not fully mitigated for the reasons stated in the whole-person concept, *infra*.

Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct, "Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations."

AG ¶ 31 describes two conditions that could raise a security concern and may be disqualifying in this case:

> (a) a single serious crime or multiple lesser offenses; and
>
> (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

AGs ¶¶ 31(a) and 31(c) apply because Applicant had alcohol-related arrests in 1972, 1991, 1994, 2007, and 2008. In 1998, Applicant was convicted of possession of a concealed firearm. He was also arrested for two assaults. These arrests are sufficient to require further inquiry into the applicability of mitigating conditions.

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

> (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
>
> (b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
>
> (c) evidence that the person did not commit the offense; and
>
> (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

AG ¶ 32(a) applies to his 1991 DUI and his 1998 possession of a concealed firearm. These two offenses occurred so long ago that they are unlikely to recur. These two offenses do not cast doubt on Applicant's reliability, trustworthiness, or good judgment.

AG ¶ 32(c) applies to all of the arrests except his 1991 DUI and his 1998, possession of a concealed firearm. He was convicted of both offenses.

In sum, criminal conduct concerns are mitigated because Appellant was only convicted of two offenses, and the most recent offense was in 1998. He denies criminal culpability on all offenses not involving a criminal conviction. Notwithstanding the absence of more than two criminal convictions, Applicant had **alcohol-related** arrests or accidents in 1972, 1991, 1994, 2000, 2007, and 2008. Applicant's alcohol consumption is the fundamental security concern, and his alcohol problem is better addressed under Guideline G than under Guideline J.

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 have incorporated my comments under Guidelines G and J 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 contributes to his company and the Department of Defense. There is no evidence of any drug abuse. There is no evidence of disloyalty, or that he would intentionally violate national security. His 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. Applicant knows the consequences of excessive alcohol consumption.

The evidence against approval of Applicant's clearance is more substantial at this time. Applicant has consumed alcohol since he was 17 years old. He has consumed alcohol at times to excess, with some periods of abstinence, for 38 years. Applicant had alcohol-related arrests or accidents in 1972, 1991, 1994, 2000, 2007, and 2008. He completed a 13-hour alcohol-related counseling program in 2007, and then he resumed his alcohol consumption.[8]

[8]For example, in ISCR Case No. 05-16753 at 2-3 (App. Bd. Aug. 2, 2007) the Appeal Board reversed the administrative judge's grant of a clearance and noted, "That Applicant continued to drink even after his second alcohol related arrest vitiates the Judge's application of MC 3." In ISCR Case No. 05-10019 at 3-4 (App. Bd. Jun. 21, 2007), the Appeal Board reversed an administrative judge's grant of a clearance to an applicant (AB) where AB had several alcohol-related legal problems. However, AB's most recent DUI was in 2000, six years before an administrative judge decided AB's case. AB had reduced his alcohol consumption, but still drank alcohol to intoxication, and sometimes drank alcohol (not to intoxication) before driving. The Appeal Board determined that AB's continued alcohol consumption was not responsible, and the grant of AB's clearance was arbitrary and capricious. *See also* ISCR Case No. 04-12916 at 2-6 (App. Bd. Mar. 21, 2007) (involving case with most recent alcohol-related incident three years before hearing, and reversing administrative judge's grant of a clearance).

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. In cases of substantial alcohol consumption, involving a significant number of alcohol-related incidents, mitigation is not possible unless there is a fairly lengthy period of abstention from alcohol consumption, or very strong evidence of responsible, limited alcohol consumption.[9] Applicant's excessive alcohol consumption is of long duration, and it contributed to his altercations with the police, as well as his arrests for DUI. Moreover, I am not satisfied that Applicant was candid and truthful at his hearing about his level of alcohol consumption. From his demeanor, and the way he answered questions, I am convinced he was understating the amount of alcohol he consumed and is consuming. He also made inconsistent statements about why he missed his court hearing for his possession of a concealed handgun. He was not truthful when he said he had permission to miss his court date, and when he said his lawyer told him not to turn himself in to the police. His prior inconsistent statements are strictly applied to the issues of assessment of Applicant's credibility, evaluation of whether he has demonstrated successful rehabilitation, and for whole-person analysis.[10] In conclusion, lingering doubts remain concerning Applicant's current credibility, reliability, trustworthiness, rehabilitation, and good judgment.

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, I conclude Applicant is not eligible for access to classified information.

[9]*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).

[10]In 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)). I have considered the non-SOR misconduct for the five above purposes.

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
Subparagraphs 1.a to 1.g:	Against Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraphs 2.a to 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.

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MARK HARVEY
Administrative Judge