DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 09-00759
	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Candace L. Garcia, Esquire, Department Counsel
For Applicant: Anthony DeSisto, Esquire

January 31, 2011

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant's use of alcohol to cope with his spouse's infidelity led to a January 2004 domestic assault offense, repeated violations of protective orders in 2004, and a November 2004 drunk driving incident. He completed court-mandated treatment for diagnosed alcohol abuse in 2005, but drove while impaired by alcohol in September 2008. A clinical social worker assessed Applicant as not having an alcohol problem in October 2008, but there is indication that Applicant was not upfront with her about his alcohol abuse. Despite 15 additional sessions of court-ordered alcohol counseling completed in May 2010, he continues to minimize the impact of alcohol on his behavior. Clearance denied.

Statement of the Case

On December 23, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline G, Alcohol Consumption, and Guideline J, Criminal Conduct that provided the basis for its preliminary decision to revoke his security clearance. DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense 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 of Defense on September 1, 2006.

Applicant responded to the SOR allegations on January 16, 2010, and indicated he did not want a hearing. The Government requested a hearing, and the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On April 30, 2010, counsel for Applicant entered his appearance. On May 3, 2010, I scheduled a hearing for May 25, 2010.

I convened the hearing as scheduled. Twenty-one Government exhibits (Ex. 1-21) and two Applicant exhibits (Ex. A-B) were entered into evidence. Applicant testified, as reflected in a transcript (Tr.) received on June 7, 2010.

Findings of Fact

The SOR alleged under Guideline G, Alcohol Consumption, that Applicant consumed alcohol, at times to excess and intoxication, from about 1976 to at least September 2008 (SOR 1.a); that he received treatment from March 2004 to April 2005 for diagnosed alcohol abuse as ordered by the court for a January 2004 domestic assault incident (SOR 1.b); that he was fined for a November 2004 driving while intoxicated offense and refusal to submit to a chemical test (SOR 1.c); and that he pleaded guilty and was sentenced for a September 2008 refusal to submit to a chemical test—second offense (SOR 1.d).

The SOR alleged under Guideline J, Criminal Conduct, that Applicant was arrested for domestic disorderly conduct and domestic simple assault in January 2004, a restraining order was issued against him, and he was ordered into counseling (SOR 2.a); that a protective order, issued against him in family court, was in effect from February 2004 to March 2007 (SOR 2.b); that he was arrested in March 2004 for a misdemeanor violation of that protective order (SOR 2.c), and in August 2004 for a felony violation of that protective order (SOR 2.d); that he was arrested and sentenced for DWI and refusal to submit to chemical test in November 2004 (SOR 2.e); that he was sentenced to home confinement on a December 2004 violation of probation charge (SOR 2.f); and that he was arrested and sentenced for a September 2008 refusal to submit to a chemical test — second offense (SOR 2.g).

In response to the SOR, Applicant denied that he consumed alcohol to excess over the period alleged, and explained that he exercised good judgment in his drinking until late 2003 into 2004, when he turned to alcohol to cope with the stress from his spouse's extramarital affair and the dissolution of his marriage. He indicated that after his 2004 arrests, he reduced his alcohol consumption significantly. Applicant disputed the dates alleged for his counseling. He acknowledged it was court-ordered but not because of a diagnosis of alcohol abuse. Applicant admitted that several charges were filed against him, but stressed that he was not convicted of criminal DWI for either the November 2004 or September 2008 incidents. He denied any felony charges on the basis that the August 2004 violation of the protective order was a second offense and hence a misdemeanor. After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 52-year-old senior systems engineer, who has been employed by a defense contractor since March 1997. He holds a secret-level security clearance, which was granted in August 1998. (Ex. 21.) Applicant was granted his first security clearance in 1981. (Tr. 29.)

Applicant began drinking as a college student. From 1976 to 1980, he consumed a few beers with friends on Thursday evenings and on the weekends. After college, he began his career with a defense contractor in June 1980. (Tr. 31.) Applicant drank beer and occasional mixed drinks on weekends at bars and restaurants. In August 1983, Applicant married his now ex-wife. They had three children, who are now ages 25, 21, and 19. (Ex. 1.) After getting married, he moderated his consumption to one or two beers after work at home once or twice a week and on weekends. (Ex. 2.)

Around 2002, Applicant's marriage began to deteriorate. He learned his spouse was having an affair (Tr. 32-34.), and he turned to alcohol to cope with marital issues and stress. He began drinking three or four beers a night at home, and more on the weekends. (Tr. 60.) His drinking led to several criminal charges in 2004, as follows:

In January 2004, Applicant consumed five or six beers (Tr. 62.) and returned home upset with his spouse over her infidelity. He physically assaulted his spouse (repeatedly pushed her into a wall) and 12-year-old daughter (pushed her into a bedroom). Applicant then punched his 18-year-old son, who had intervened to protect his mother. (Ex. 2, 5; Tr. 62.) His younger son called the police (Tr. 62.), and Applicant was arrested and charged with one count of disorderly conduct and three counts of domestic simple assault/battery. (Ex. 4, 5.) On February 11, 2004, a restraining order was issued, ordering him to stay away from his spouse and daughter. (Ex. 4, 9.) In March 2004, he pleaded no contest to one count of domestic simple assault against his wife for the January 2004 incident. He was ordered to pay $118.50 costs, to have no contact with his spouse, and to continue alcohol treatment ordered by the family court that he had just started. (Ex. 9, A.) The other counts were dismissed. (Ex. 4, 6, A.)

Applicant began court-ordered outpatient domestic violence counseling and alcohol counseling in March 2004. He was given a diagnosis on admission of alcohol abuse. (Ex. 7.) Despite his ongoing counseling, Applicant continued to violate the protective order. On March 20, 2004, Applicant was charged with violation of protective order that had been issued against him on March 3, 2004. (Ex. 9, 11.). After consuming at least "a few drinks," he called his spouse, allegedly to inform her that he was depositing funds she requested into her account. (Ex. 2; Tr. 36.) A protective order was renewed, enjoining him from any contact with his wife and older son. In June 2004, Applicant pleaded no contest and the charge was filed for one year on payment of $118.50 costs. (Ex. 2, 4, 11, A.) The family court ordered him to continue his counseling. (Ex. 9.)

Applicant's counselor filed a progress report with the family court in April 2004 indicating no signs of substance abuse or dependency on Applicant's part. (Ex. 9.) As of August 3, 2004, Applicant had completed the domestic violence counseling and alcohol counseling court-ordered for the January 2004 incident. (Ex. 6.) But he was ordered to continue treatment because he violated the no-contact order in March 2004. (Tr. 38.)

On August 8, 2004, after drinking at least "a few beers" at a local restaurant, Applicant called his spouse. When she did not answer, he went to her workplace and followed her as she left work. (Tr. 36-37/) She contacted the police, and Applicant was arrested for violation of protective order—third offense, a felony. The officer detected a strong odor of alcohol on Applicant's breath. (Ex. 12.) The protective order was renewed in district court (Ex. 13.), and Applicant was charged with misdemeanor violation of a protective order. He pleaded no contest and was sentenced to one year in prison (suspended), one year probation, and house confinement. (Ex. 2, 13, A.)

On August 19, 2004, Applicant appeared in family court, where he was granted supervised visitation with his minor children on the condition that he attend and complete a batterer's program and substance abuse screens. His restraining order was to remain in effect until March 3, 2007. (Ex. 9.) In October 2004, the family court granted Applicant alternating weekend visitation and Wednesday overnight visitation with his minor children, discontinued supervised visitation, and amended the no-contact order to allow for contact between Applicant and his spouse on matters relating to their minor children. (Ex. 9, 13.)

As of October 2004, Applicant's counselor assessed his condition as improved. In early November 2004, Applicant was formally discharged after 16 sessions with a diagnosis of alcohol abuse—decreased use. His counselor recommended that he attend Alcoholics Anonymous (AA) meetings if he continued to drink alcohol to deal with his moods. She gave him a good prognosis if he decreased his alcohol use and resolved grieving issues over the loss of his marriage. (Ex. 7.)

In early November 2004, Applicant ran a stop sign and crashed into the rear of another vehicle. He had consumed between eight and ten beers before the accident (Ex. 2; Tr. 55.), and responding police detected signs of alcohol on Applicant (slurred speech, strong odor of alcohol on breath, watery and bloodshot eyes). Applicant failed field sobriety tests, and he was arrested for DWI, first offense. He refused to submit to a chemical test at the station and a refusal charge was added. (Ex. 2, 14.) The DWI charge was dismissed in court in return for a guilty plea to refusal to submit to a chemical test. (Ex. 15, A.) He was fined and ordered to complete 10 hours of community service. (Ex. 2.) The November 2004 drunk-driving incident was in violation of his probation for the August 2004 offense, and in early December 2004, he was sentenced to six months community (house) confinement with electronic monitoring, and to substance abuse and domestic abuse counseling. He was released early from home confinement, in February 2005. (Ex. 2, 17.)

In 2005, Applicant often stopped for dinner before going home to his apartment. He drank on average two beers a night and three or four on the weekends, but abstained from alcohol when he had his children. (Tr. 40, 55.) Applicant participated in two counseling sessions in April 2005 with the counselor who had treated him in 2004. At discharge in late April 2005, the counselor indicated that Applicant had resolved his legal issues and divorce crisis (his divorce was finalized in December 2005), but she again gave him a diagnosis of alcohol abuse. She indicated that he minimized the effect of alcohol on his life, although had committed himself to not abuse alcohol. Counseling on the next phase of life adjustment was recommended. She noted his progress was good if he remained focused. She recommended aftercare that included "12 step if acceptance of ETOH problem." (Ex.

7.) After his counseling, Applicant drank on average 10 to 15 beers a week. His goal was to avoid drinking to intoxication, which he claims he met. (Tr. 75-76.)

In September 2006, a medical emergency led Applicant to stop drinking alcohol altogether until about mid-2007. (Tr. 41-42.) He began dating his current girlfriend, and drank three or four beers with dinner when out with her on Friday or Saturday nights or both. (Tr. 42-43.) Starting in late 2007, he began drinking one or two beers a night after work two or three nights a week in addition to a six-pack of beer over the course of a weekend. (Ex. 2.) Applicant believed he could handle his drinking on his own. (Tr. 75-76, 87.)

In mid to late September 2008, Applicant decided to take a couple of days off from work while his employer found him a new assignment. Applicant stopped off at a restaurant on September 25, 2008, to have a few beers with some friends, but "a couple of beers led to a few too many." (Tr. 44-45.) Driving home after he had consumed at least five beers, he was stopped for failure to remain in his travel lane. A strong odor of alcohol was detected about Applicant and he failed field sobriety tests. He was placed in custody and issued a summons for refusal to submit to a chemical test — second offense. (Ex. 2, 17.) Applicant refused to submit to the breathalyzer because he suspected he would have failed the test. (Tr. 45.)

Applicant was referred by pretrial services to counseling for stress management. On October 9, 2008, Applicant underwent a diagnostic evaluation. A licensed clinical social worker diagnosed Applicant with adjustment disorder (unspecified). Applicant did not report any past history of abuse to the clinician, and based on Applicant's statements, the clinician found no evidence of a substance abuse issue. (Ex. 20, B.) Applicant denies any intent to mislead the clinician (Tr. 48.), but the evidence indicates he was not fully forthcoming about his alcohol abuse history. The social worker left it to Applicant's discretion to pursue counseling for daily stressors. (Ex. B.) Applicant did not follow through with a counseling appointment. (Ex. 18, 20.)

In November 2008, Applicant pleaded no contest in court to the refusal charge, and he was sentenced to six months in custody of adult correction with 30 days to be spent in home confinement and the balance suspended, six months probation, a $600 fine plus costs and assessments for a total of $1,340.50, 60 hours of community service, 12 months loss of license, and DWI school (driver retraining) with a substance abuse assessment, and if necessary, counseling. (Ex. 18.) Applicant was discharged from home confinement in late December 2008. (Ex. 16, 19.)

Applicant notified his supervisor of the chemical refusal charge shortly after his arrest. (Ex. 2.) On October 3, 2008, he applied for renewal of his security clearance and disclosed the then-pending charge, as well as the November 2004 refusal-to-submit charge, the March 2004 and August 2004 violations of a no-contact order, and the January 2004 "domestic disturbance." (Ex. 1.)

On December 2, 2008, a Government investigator interviewed Applicant about his arrest record and his alcohol abuse treatment. Applicant denied that alcohol was involved in the August 2004 violation of the protective order. He now acknowledges he had consumed

around three beers. (Tr. 95-96.) Applicant admitted that only his supervisor and his daughter, who lives with him, knew about the September chemical refusal charge, and that he would be embarrassed if other family members and coworkers were to learn of his arrest. Applicant admitted that he had not informed security officials at work that he was wearing an electronic monitor. Applicant indicated he had abstained from alcohol since his recent arrest and he did not intend to consume alcohol in the future. (Ex. 2.) After his interview, Applicant informed a security official at work about his electronic monitor. (Ex. 3.)

Applicant abstained from alcohol for six months following his September 2008 arrest. (Tr. 48-49.) He resumed drinking around April 2009, one or two drinks while out to dinner with his girlfriend once or twice a week on the weekends. He was still drinking in this pattern as of May 2010. (Tr. 48-49, 58.) Applicant testified that his girlfriend "like [him] will have maybe one or two glasses of wine" when they go out. (Tr. 100.)

Applicant was referred for additional counseling.[1] He attended 15 sessions (five individual and ten group sessions) from January to May 2010. (Tr. 47, 85-86.) On completing the counseling, Applicant satisfied the terms of his sentence for the September 2008 chemical refusal. (Tr. 92.) Concerning his prognosis, Applicant testified that his counselor thought he (Applicant) "had a good handle on how alcohol affects [his] behavior," and how to avoid a recurrence of September 2008, when he let himself get caught up in the fun and drank more than his intended two beers. (Tr. 88.) But the records of the referral for counseling and the counseling itself are not in evidence and his testimony on that issue is otherwise uncorroborated.

Applicant now deals with his stress by exercising, restoring an old car, or riding his motorcycle. (Tr. 89.) He does not believe that he has any current issues with alcohol or with stress management. (Tr. 98.) Applicant does not keep alcohol in his home. His daughter still lives with him while she commutes to a local community college. (Tr. 101.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to 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(c), the entire process is a conscientious scrutiny of a number

[1]Applicant indicated in his response to the SOR that state law requires an automatic alcohol abuse evaluation and counseling when arrested for a breathalyzer or chemical test refusal. District court records (Ex. 18.) indicate that Applicant was sentenced on November 14, 2008, in part to an alcohol assessment and, if necessary, counseling.

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. 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 that 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 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

Alcohol Consumption

The security concern about alcohol consumption is set out in AG ¶ 21: "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." Applicant was seriously impaired by alcohol when he ran a stop sign in November 2004, and when he was pulled over for failure to stay in his lane in September 2008. He drank between eight and ten beers before his arrest in November 2004 and he would have failed a breathalyzer in September 2008. Alcohol was also involved in the January 2004 domestic assault incident, and the protective order violations in March 2004 and August 2004. AG ¶ 22(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," applies.

Before his arrests in November 2004 and September 2008, Applicant engaged in binge drinking within the meaning of AG ¶ 22(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." AG ¶ 22(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," also applies. Applicant was diagnosed with alcohol abuse in 2004 by a counselor on staff of an outpatient program authorized by the court to provide substance abuse treatment to offenders. The diagnosis did not change when Applicant returned to the counselor for a couple of sessions in April 2005. And Applicant's abusive drinking on September 25, 2008, qualifies as a relapse after treatment implicating AG ¶ 22(f), "relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program."

Applicant has not been involved in any alcohol-related incident or been intoxicated since September 2008. But it is difficult to apply AG ¶ 23(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." His September 2008 abuse was serious, especially because it occurred after counseling. He was referred for additional counseling, which he did not complete until May 2010.

As set forth in AG ¶ 23(b), an applicant with diagnosed alcohol abuse should acknowledge his or her issues of alcohol abuse, show evidence of actions taken to overcome the problem, and establish a pattern of responsible use.[2] Applicant was compliant with his alcohol treatment because he faced sanctions by the court if he failed to comply. This is not a case where he voluntarily sought help to address his alcohol problem. AG ¶ 23(b) does not apply because his alcohol abuse on September 25, 2008 was not an aberration. After he completed his counseling in 2005, Applicant drank about 10 to 15 beers a week. A medical emergency in September 2006 led him to abstain until mid-2007. He testified that he drank at most six alcohol drinks a week before his arrest in September 2008, and that if he went out for dinner on a Friday or Saturday night, he might drink three or four. (Tr. 42.) But when he was interviewed in August 2009, he detailed heavier alcohol consumption starting in late 2007. He indicated that his drinking increased to one or two beers a night after work two or three nights a week, and a six pack of beer over the course of a weekend. He drank at home and in bars. This account of his drinking is more credible because it is more contemporaneous than his present recollection. His drinking of up to 10 to 12 drinks a week culminated in the September 2008 incident where he drove a motor vehicle impaired by alcohol.

Since the September 2008 incident, Applicant has limited his drinking to one or two drinks when he is out with his girlfriend. Even so, it is not enough for mitigation given his relapse after counseling. AG ¶ 23(d) requires successful completion of counseling, including aftercare, "a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations," and a favorable prognosis.[3] Applicant's

[2]AG ¶ 23(b) specifically states: "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)."

[3]AG ¶ 23(d) requires that "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

favorable assessment from a licensed social worker on October 9, 2008, was based on Applicant's false responses (no past history of abuses). Applicant's failure to acknowledge his history of abuse calls into question whether he truly acknowledges his alcohol abuse problem. Notwithstanding the social worker's assessment that further substance use or abuse counseling was not necessary, Applicant was subsequently required to undergo additional counseling, which he did not complete until May 2010, shortly before the hearing on his security eligibility. Applicant's claim of a recent favorable assessment is uncorroborated.

Applicant is not required to abstain completely from alcohol in the absence of a diagnosis of alcohol dependency. Yet it is difficult to fully apply either AG ¶ 23(b) or ¶ 23(d) in light of his recent counseling and ongoing tendency to blame others or his circumstances rather than acknowledge his drinking problem as a contributing factor, e.g., his son was very aggressive towards him in the January 2004 incident (Tr. 64.); he doesn't recall pushing his wife or his daughter but "perhaps in the melee things happen" (Tr. 64.); he thought that he was not as far down the road as he was and didn't see the stop sign that he ran in November 2004. (Tr. 81.) Applicant has not demonstrated the insight into his problem that one would expect given his participation in outpatient counseling in 2004 and 2005 and again in 2010. Alcohol consumption concerns are not fully mitigated.

Criminal Conduct

The security concern about criminal conduct is set out in Guideline J, AG ¶ 30:

> Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

The infidelity of Applicant's ex-wife was a contributing factor in his 2004 criminal conduct. However, it does not justify his January 2004 physical assaults of his family members, his violations of protective orders in March 2004 and August 2004, or his drunk driving in November 2004, which was in violation of his probation. The evidence establishes that Applicant drove while significantly impaired by alcohol in November 2004 and again in September 2008, although he pled no contest to chemical refusal charges in both instances. His criminal offenses implicate AG ¶ 31(a), "a single serious crime or multiple lesser offenses" and AG ¶ 31(c), "allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted."

AG ¶ 32(a), "so much times 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," applies to the extent that the domestic abuse and protective order violations are not likely to recur. Applicant is divorced from his spouse and there has been no recurrence of similar problems since 2004. He exhibits remorse over the domestic abuse. *See* AG ¶ 32(d) ("there is evidence of

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medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program."

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"). He has fulfilled the terms of his sentences, so he may be considered rehabilitated by the courts. But with the alcohol consumption concerns not fully mitigated, a future alcohol-related criminal offense cannot be ruled out. He has not mitigated the security concerns about his criminal conduct.

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 his conduct and all relevant circumstances in light of 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.

Applicant is a long-time defense contractor employee who has not allowed alcohol to interfere with his work performance. He also takes his parental responsibilities seriously. Notwithstanding the January 2004 assault involving his older son and his daughter, Applicant was granted overnight visitation with his children even while he was still struggling to cope with the breakup of his marriage. His personal situation has improved since his divorce, and he has developed ways to deal with stress that do not involve alcohol (e.g., exercise, restoring an old car). But his history of alcohol abuse and alcohol-related criminal incidents continue to raise doubts about his judgment and reliability, especially when he was not fully candid about his alcohol abuse during an October 2008 assessment for pretrial services, and he continues to minimize the impact that alcohol has had on his behavior. Based on the record before me, I am unable to conclude that it is clearly consistent with the national interest to grant Applicant continued eligibility for a security clearance at this time.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline G:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant

Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant
Subparagraph 2.e:	Against Applicant
Subparagraph 2.f:	For Applicant
Subparagraph 2.g:	Against Applicant

Conclusion

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

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Elizabeth M. Matchinski
Administrative Judge