DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 09-01266
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Greg A. Cervi, Esquire, Department Counsel
For Applicant: *Pro Se*

February 24, 2010

Decision

HARVEY, Mark, Administrative Judge:

Applicant received alcohol-related treatment in the early 1990s. In June 2008, the police arrested Applicant for driving under the influence of alcohol (DUI), and he admitted he was DUI. From July 2008 to September 2008, he received alcohol-related treatment. In September 2008, his therapist diagnosed him as alcohol dependent. Applicant failed to fully comply with his therapist's recommendations. Applicant minimized his alcohol consumption. Applicant failed to mitigate security concerns arising from alcohol consumption. Eligibility for access to classified information is denied.

Statement of the Case

On November 3, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) (SF 86) (Government Exhibit (GE) 1). On June 23, 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleges security concerns under Guideline G (alcohol consumption) (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 July 16, 2009, Applicant responded to the SOR allegations and requested a hearing before an administrative judge (HE 3). On October 1, 2009, Department Counsel announced he was ready to proceed on his case. On October 8, 2009, DOHA assigned Applicant's case to me. On November 13, 2009, DOHA issued a hearing notice (HE 1). On December 17, 2009, Applicant's hearing was held. At the hearing, Department Counsel offered five exhibits (GE 1-5) (Tr. 22-23), and Applicant offered two exhibits (Tr. 24; AE A-B). Applicant objected to the content of some therapy notes; however, the objection to admissibility was overruled with Applicant's comments going to the weight given the evidence (Tr. 23). Department Counsel did not object to my consideration of AE A-B (Tr. 25). I admitted GE 1-5 (Tr. 23), and AE A-B (Tr. 25). Additionally, I admitted the hearing notice, SOR, and response to the SOR (HE 1-3). On January 4, 2010, I received the transcript. No post-hearing exhibits were received.

Findings of Fact[1]

In Applicant's response to the SOR, he admitted the conduct alleged in SOR ¶¶ 1.a to 1.g, except he changed the year he began consuming alcohol from 1972 to 1977 (HE 3). He also explained the circumstances of the offenses and provided mitigating information (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 findings of fact.

Applicant is 50 years old (Tr. 6).[2] In 1997, he received a bachelor of science degree in computer information (Tr. 6-7). In 2004, he received a master's degree in business administration (Tr. 6-7). In 1977, he married his spouse (Tr. 7). His two children are ages 24 and 28 (Tr. 8). He held a Secret security clearance from 1990 to 1995 (Tr. 8). Applicant has not served in the military (GE 1).

Alcohol consumption

Applicant consumed alcohol, occasionally to intoxication, from about 1977 to August 2008 (Tr. 25; SOR ¶ 1.a—HE 2, 3). He began consuming alcohol when he was 18 (Tr. 25). In 1979, the police arrested Applicant for illegal possession of alcohol when he was 19 (SOR ¶ 1.b—HE 2, 3; GE 4 at 9-10).

[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.

Applicant said that when he drank alcohol he typically drank about a half pint of rum to make him feel relaxed (Tr. 27). He gradually increased the frequency of his alcohol consumption from weekends to three or four times a week (Tr. 29). He rarely drank alcohol outside of his home (Tr. 29).

Applicant consumed a half pint of alcohol almost every day after work (Tr. 38-39). He tried to abstain from alcohol consumption for thirty days and was unable to do so (Tr. 36-37). He decided to enroll himself into an outpatient alcohol treatment program (Tr. 37). From around 1991 to about 1993, he received alcohol therapy and treatment (SOR ¶ 1.c—HE 2, 3). He was diagnosed as an alcoholic (Tr. 40; GE 4 at 9). He received six weeks of intensive therapy, and then less-intensive therapy for the next six months (Tr. 40). At the conclusion of the therapy program, he thought the diagnosis was that he was doing well; however, he was "pretty sure there was a recommendation there to continue group" therapy (Tr. 43). Applicant did not continue with group therapy because he believed he "had things relatively under control" (Tr. 43). He was able to maintain sobriety for about six months (Tr. 44). He repeatedly promised himself that he would stop consuming alcohol for years; however, he eventually resumed his alcohol consumption (Tr. 44).

Applicant drank alcohol twice to four times per week (Tr. 45). On September 16, 2007, he had a heart attack and barely survived (Tr. 18, 22; AE B at 1). His doctor recommended that he stop his alcohol consumption (Tr. 46-47). Applicant recognized that he needed to stop drinking alcohol if he wanted to live (Tr. 18, 22). He also began to have greater faith in God (Tr. 19, 22). He informed his employer that he did not want to work 70 to 80 hours a week anymore (Tr. 19, 22). He stopped consuming alcohol from September 16, 2007, until April 2008 (Tr. 47).

In April 2008, after a contentious meeting with management, Applicant purchased some rum and returned to consumption of alcohol after eight months of sobriety (Tr. 20, 22, 47-48). He consumed alcohol from April until June 2008 (Tr. 20, 22, 48). On June 17, 2008, after "another particularly ugly meeting" Applicant resigned from his employment (Tr. 20, 22, 48-51; AE B at 1). On June 22, 2008, he drove about 60 miles to an out-of-state casino, gambled, and drank four rum and cokes (Tr. 51-56).[3] On his way home the police stopped him for failure to maintain his lane (GE 4 at 5). He failed a field sobriety test (Tr. 80-81). And he refused to consent to a breathalyzer test (Tr. 57, 81). The police arrested him for DUI (Tr. 20-22, 51-56; SOR ¶ 1.d—HE 2, 3; GE 4 at 5).

The court placed Applicant on a 12-month diversion program, which included alcohol-related counseling and a victim impact panel. He paid a $635 fine, and his driver's license was revoked for one year (GE 5 at 5). He claimed he was caught for DUI the only time he ever drank alcohol and drove (Tr. 39; GE 4 at 9). He said he did not go out after consuming alcohol (Tr. 83; GE 4 at 9). Applicant had 12 meetings with his counselor from July to September 2008 (Tr. 73; GE 5). On July 1, 2008, his counselor, who is a licensed clinical social worker, indicated he was receiving individual

[3]Applicant also provided a statement indicating he drank "a couple of drinks" (AE B at 2).

treatment for alcoholism (GE 5 at 1). His counselor recommended that Applicant participate in Alcoholics Anonymous (AA) meetings and that he take Vivitrol (Tr. 57, 62, 67-68; GE 5). Applicant did not like attending AA meetings, and declined to participate in AA (Tr. 59-60). He did not take Vivitrol even though his counselor said it was better than Antabuse (Tr. 62, 67). His personal physician had little knowledge of Vivitrol (Tr. 62). He chose to engage in church-related counseling, which he received from a friend who is not a pastor or church official (Tr. 61). The friend is not a certified counselor (Tr. 61-62). He completed all of the requirements of his diversion process (Tr. 74).

In July 2008, Applicant's physician prescribed Antabuse for thirty days for Applicant at Applicant's request (Tr. 63, 65, 68). Applicant took Antabuse for three weeks (Tr. 64).[4] He stopped taking Antabuse because he felt he did not need it (Tr. 64, 69).

In August 2008, he drank alcohol twice, and on each occasion he had a couple of drinks (Tr. 71-73).[5] He has not consumed any alcohol since then (Tr. 21, 22, 73). He contended that the heart attack, termination from employment, and the DUI caused him to stop his alcohol consumption (Tr. 21, 22). He conceded that he was unable to abide by two or three previous promises to abstain from alcohol consumption (Tr. 46).

SOR ¶ 1.g alleges that Applicant was diagnosed as alcohol dependent in September 2008, and that he continued to consume alcohol until at least August 2008 (HE 2, 3). Applicant admitted the facts in SOR ¶ 1.g (HE 3). Applicant denied consuming alcohol after August 2008, and there is no evidence that Applicant consumed alcohol after September 2008.

Applicant did not receive any alcohol-related, professional counseling after September 2008 (Tr. 84). He has continued to receive counseling from the friend who attends his church (Tr. 73, 84).[6] He has not consumed alcohol for 16 months (Tr. 77-78).

July to September 2008 alcohol-treatment notes, diagnosis, and prognosis

From July 2008 to September 2008, Applicant received alcohol treatment and counseling (SOR ¶¶ 1.e and 1.f—HE 2, 3). His primary physician prescribed Antabuse

[4]On November 25, 2008, Applicant told an OPM investigator that he took Antabuse for about two weeks (GE 4 at 7).

[5]On November 25, 2008, Applicant told an OPM investigator that he used alcohol twice in August 2008, but his consumption was "very moderate as far as the amount the subject consumed and the subject did not have the desire for more at those times either" (GE 4 at 10). Applicant provided a statement at his hearing indicating he "had a drink twice in August 2008" (AE B at 2). Later in that same statement, he said he told his counselor that he had a couple of drinks but did not get drunk on the cruise (AE B at 3).

[6]In his closing argument, Applicant mentioned his friend was a former cocaine addict (Tr. 86). I decline to draw any adverse inferences about his friend's qualifications from this disclosure during closing arguments because arguments are not evidence.

for Applicant. He was diagnosed as an alcohol dependent. Applicant's therapy record for July 1, 2008, states he was "drinking heavily" from April 2008 until June 22, 2008 (GE 5 at 6). "He has had nite (sic) sweats [and] mild tremors. He had been drinking 1 pint to 1 ½ pints daily since April" (GE 5 at 6).[7] The note for September 9, 2008, indicates Applicant "got drunk on vacation cruise Aug 8th" (GE 5 at 7). The note for the September 26, 2008, session indicates Applicant will find a new counselor when he moves to a different state for employment and continue AA (GE 5 at 10). The final session was on September 26, 2008 (GE 5 at 12).

Applicant's counselor diagnosed him as alcohol dependent (AE A). Her prognosis for Applicant was excellent (AE A). She recommended that Applicant receive a security clearance (AE A). Applicant's personal physician also indicated Applicant's prognosis was excellent and recommended Applicant for a security clearance (AE A).

As indicated previously, Applicant's counselor's notes reflect that on July 1, 2008, Applicant told her that he drank a pint and a half of alcohol (Tr. 75). They also indicate she recommended he attend AA meetings (Tr. 75). Applicant denied that he ever told her he consumed alcohol to that level (Tr. 75). He insisted that he did not drink more than a half pint of rum (AE B at 2). He denied that he was a "heavy drinker" (Tr. 75). He denied that he got drunk on the cruise, and said he only had "a couple of drinks" (AE B at 2). Applicant said he told his counselor about his friend, the counselor at his church (Tr. 75; AE B). He contends she agreed that this counseling was sufficient in lieu of professional counseling and AA meetings (Tr. 75; AE B). Applicant's counselor said Applicant had tremors, and Applicant denied that he did (Tr. 76; AE B at 2). He said he had trouble sleeping since his heart attack (AE B at 2).

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id*. at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon the Applicant meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An

[7]On November 25, 2008, Applicant told an Office of Personnel Management (OPM) investigator, that after April 2008, "the frequency to which he drank corresponded with the stress at work, but when he did drink, it was moderately and not in excess and not to intoxication—maybe 1-2 drinks to help the subject relax" (GE 4 at 7).

administrative judge's over arching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the [A]pplicant concerned." *See* Exec. Or. 10865 § 7. *See also* Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the Applicant that may disqualify the Applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. *See Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an Applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the Applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An Applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* AG ¶ 2(b).

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concern is under Guideline G (alcohol consumption) with respect to the allegations set forth in the SOR.

Alcohol Consumption

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

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

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

AG ¶¶ 22(b), 22(d), 22(f), and 22(g) do not apply. Applicant did not consume alcohol at work or have any alcohol-related incidents at work. His alcohol consumption problem was not diagnosed or evaluated "by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist)." Although he received some alcohol treatment in the early 1990s, there is no clear evidence of a diagnosis of alcohol abuse or dependence. The file does not contain any records from that treatment. Applicant's SOR response is ambiguous about the diagnosis (he describes the diagnosis as

potential alcohol abuse). There is a relapse after his treatment in the early 1990s. Applicant has not failed to comply with a court order not to consume alcohol.

Applicant had one alcohol-related incident involving police intervention or arrest. His DUI arrest was in June 2008. AG ¶ 22(a) applies. Applicant occasionally consumed a pint and a half of alcohol. This constitutes binge consumption of alcohol. AG ¶ 22(c) applies. A licensed clinical social worker diagnosed Applicant as alcohol dependent. AG ¶ 22(e) applies.

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

Four Alcohol Consumption mitigating conditions under AG ¶ 23 are potentially applicable:

> (a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
>
> (b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser);
>
> (c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; and
>
> (d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

AG ¶ 23(a) does not fully apply. Applicant had a DUI in June 2008. He most recently drank to intoxication in August 2008. He described his current alcohol consumption in his SOR response and at his hearing. However, the most accurate description of his alcohol consumption was provided in the alcohol-treatment notes of

his counselor.[8] Although his alcohol-related incident, a DUI, is relatively recent, it is a single incident and therefore infrequent. Applicant understated his alcohol consumption. Without credible evidence of his current rate of alcohol consumption the likelihood of recurrence of alcohol-related offenses cannot be sufficiently assessed to mitigate fully security concerns.

Security clearance cases are difficult to compare, especially under Guideline G, because the facts, degree, and timing of the alcohol abuse and rehabilitation show many different permutations. The Appeal Board has determined in cases of substantial alcohol abuse that AG ¶ 23(b) did not mitigate security concerns unless there was a fairly lengthy period of abstaining from alcohol consumption.[9]

AG ¶¶ 23(b) to 23(d) do not fully apply. Applicant did not fully acknowledge or completely describe his history of alcohol consumption. He did not provide a thorough and accurate description of his current alcohol consumption. A licensed clinical social worker diagnosed Applicant as being alcohol dependent in September 2008. He made statements that were inconsistent with his treatment records. A clearer and more forthright description of his past alcohol use would have helped to erase lingering concerns. I am convinced he is minimizing his alcohol consumption problem, refusing to fully acknowledge the extent of his alcohol consumption problem. Statements from colleagues, friends, or family members about his alcohol consumption would have been helpful. Applicant has completed an alcohol treatment or counseling program. He received a positive prognosis; however, he did not continue his counseling with a certified, professional counselor. He did not continue to attend Alcoholic Anonymous meetings. His history of alcohol problems and his failure to continue with any credible, certified, professional, or AA rehabilitation programs precludes providing full mitigating credit under AG ¶ 23.

SOR ¶¶ 1.f and 1.g allege that Applicant was prescribed Antabuse by his physician, and he continued to consume alcohol after being diagnosed as alcohol dependent. Applicant's last established consumption of alcohol was in August 2008. Sometime in the July to September 2008 period, he was diagnosed as alcohol dependent. His use of Antabuse is a mitigating circumstance. Accordingly, I find for Applicant at page 12, *infra*, with respect to SOR ¶¶ 1.f and 1.g.

Applicant's statement about abstaining from alcohol consumption after August 2008 is a positive development, showing that he recognizes the importance of overcoming his alcohol problems. However, after careful consideration of the Appeal Board's jurisprudence on alcohol consumption,[10] I conclude his single DUI in June

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

[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]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.

2008, his failure to be honest and forthright about his previous alcohol consumption, and the absence of detailed corroborating information about his current alcohol consumption weigh against mitigating alcohol consumption concerns.

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

Although there is some evidence supporting approval of Applicant's clearance, the mitigation evidence is insufficient to resolve security concerns. Applicant knows the consequences of excessive alcohol consumption. He has had only one alcohol-related offense involving the police and the courts, a DUI in June 2008. He completed an alcohol-therapy program in the early 1990s and in September 2008, and received an excellent prognosis from his counselor and personal physician. Applicant contributes to his company and the Department of Defense. There is no evidence at work of any other disciplinary problems. There is no evidence of disloyalty, or that he would intentionally violate national security. His character and good work performance show some responsibility, rehabilitation, and mitigation. His supervisors evidently support him or he would not have been able to retain his employment after his security clearance was called into question.

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).

The evidence against approval of Applicant's clearance is more substantial. Applicant had a problem with alcohol use beginning in 1977, when he was a minor. He continued to consume alcohol at times to excess, with some periods of abstinence, until August 2008. He received intensive alcohol therapy in the early 1990s; however, he had a relapse and returned to alcohol consumption a few months after completing this program. He had a DUI in June 2008. He declined a breath-alcohol test and there is no evidence to corroborate his contention that he only had four or "a couple" of drinks before driving. He told his therapist that he drinks a pint to a pint and a half of alcohol and that he got drunk in August 2008 on a cruise. She described tremors, which she related to his alcohol consumption. She recommended Applicant attend AA meetings and continue therapy or counseling.

Applicant denied that he told his therapist that he consumed up to a pint and a half of alcohol, and repeatedly said he stops consuming alcohol when he consumes a half pint of rum. In August 2008, he claimed he only had one drink or a couple of drinks and did not get drunk (Tr. 71-73; AE B). He told an OPM investigator that his alcohol consumption on the cruise in August 2008 was "very moderate" (GE 4 at 10). However, I find the therapist's notes to be more credible than Applicant's statements, which conflict with the contents of the therapy notes. I specifically find he told his counselor that he got drunk on the cruise. Applicant said the only time he ever drove after drinking alcohol resulted in his DUI arrest and conviction (Tr. 39; GE 4 at 9). I am convinced Applicant is minimizing his alcohol consumption. He stated the last time he consumed alcohol was in August 2008. He did not provide any corroboration from friends and family of his contention of alcohol abstinence. Although he received an excellent prognosis from his therapist and personal physician, they may not be aware that he did not attend AA or receive ongoing therapy or counseling from a professional, certified counselor after September 2008. They may not be aware that he contested the information in his therapy notes about the degree of his alcohol consumption and was minimizing his alcohol consumption. As such their opinions about his prognosis are discounted. Applicant's failure to be candid and forthcoming about his alcohol consumption at his hearing shows a lack of judgment, reliability, and trustworthiness.

I conclude Applicant has not mitigated the security concerns pertaining to alcohol consumption. I take this position based on the law, as set forth in *Department of Navy v. Egan,* 484 U.S. 518 (1988), my "careful consideration of the whole person factors"[11] and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has not mitigated or overcome the government's case. For the reasons stated, I conclude he is not eligible for access to classified information.

[11]*See* ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

Formal Findings

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

Paragraph 1, Guideline G:	AGAINST APPLICANT
Subparagraphs 1.a to 1.e:	Against Applicant
Subparagraphs 1.f and 1.g:	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