



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



In the matter of:)
)
-----) ISCR Case No. 09-01331
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Nichole L. Noel, Esquire, Department Counsel
For Applicant: Kevin R. Hancock, Esquire

March 25, 2010

Decision

HARVEY, Mark, Administrative Judge:

Applicant has a lengthy history of alcohol consumption and received inpatient alcohol-related treatment on about ten occasions from 1997 to 2007. In 2002, he was diagnosed as alcohol dependent. On December 4, 2007, he stopped consuming alcohol. Because of his long history of excessive alcohol consumption and multiple relapses, one more year of abstinence is needed to provide sufficient assurance that he will not return to alcohol consumption. Applicant failed to fully mitigate security concerns arising from alcohol consumption. Security concerns relating to personal conduct are mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On February 27, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) (SF 86) (Government Exhibit (GE) 1). On August 28, 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 Guidelines G (alcohol consumption) and E (personal conduct) (Hearing Exhibit (HE) 4). 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 September 1, 2009, Applicant responded to the SOR allegations (HE 5). Applicant requested a hearing before an administrative judge. On September 28, 2009, Department Counsel was ready to proceed on his case. On September 29, 2009, DOHA assigned Applicant's case to another administrative judge. The case was scheduled for a hearing on October 29, 2009; however, the hearing was cancelled due to excessive snow at Applicant's location (HE 3). On November 10, 2009, the case was transferred to another administrative judge, and on January 7, 2010, the case was transferred to me. On January 25, 2010, DOHA issued a hearing notice setting the hearing for February 9, 2010 (HE 2). The February 9, 2010, hearing was cancelled because of heavy snowfall in the Washington D.C. area. On February 19, 2010, DOHA issued a hearing notice setting the hearing for March 3, 2010 (HE 1). Applicant's hearing was held on March 3, 2010. At the hearing, Department Counsel offered three exhibits (GE 1-3) (Tr. 13-14), and Applicant offered four exhibits (Tr. 109, 145-146; AE A-D). Applicant did not object to the admissibility of GE 1-3 (Tr. 14). Department Counsel did not object to my consideration of AE A-D (Tr. 110, 146). I admitted GE 1-3 (Tr. 14), and AE A-D (Tr. 110, 146-147). Additionally, I admitted three hearing notices, the SOR, and the response to the SOR (HE 1-5). On March 10, 2010, I received the transcript. No post-hearing exhibits were offered or received (Tr. 159).

Procedural Ruling

Department Counsel requested administrative notice of facts concerning the diagnosis of major depressive disorder, dysthymic disorder, social phobia (social anxiety disorder), and avoidant personality disorder as discussed in the *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition, Text Revision (DSM-IV-TR) Washington, DC, American Psychiatric Association, 2000 (Administrative Exhibits (Admin. Ex.) I-III) (Tr. 13). Applicant objected to admission on grounds of lack of relevance (Tr. 16-17). I overruled the objection; however, the documents were admitted for the limited purpose of showing detail and context for these diagnoses as they relate to alcohol consumption (Tr. 18-19). They were not admitted to raise an independent security concern under the psychological conditions guideline (Tr. 18-19).

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice in ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

Findings of Fact¹

In Applicant's response to the SOR, he admitted the conduct alleged in SOR ¶¶ 1.a to 1.d, and he denied the allegation in SOR ¶ 2.a (HE 5). 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 49 years old (GE 1).² He received a high school diploma in 1978. He earned a certificate of completion for computer programming from a trade school (Tr. 90). He began his employment with his current employer in October 2007. He has been employed in information technology as a software engineer and senior programmer for several years (Tr. 91-93). He has never married, and is not currently dating anyone (Tr. 117). He has one brother. He has never served in the military. In March 2006, he left employment under adverse circumstances. He has no reportable illegal drug use, delinquent debts, or criminal offenses listed on his SF 86.

Alcohol consumption and rehabilitation treatment

Applicant began drinking alcohol when he was 15 years old at parties and after football games (Tr. 94-95; SOR ¶ 1.a; HE 5). He continued drinking alcohol for several years (Tr. 95). When he turned 25, he began traveling extensively for his employer, and his alcohol consumption increased (Tr. 95). Applicant missed work because he was hung over in 1996 or 1997 (Tr. 97). In about 1995 or 1996, Applicant first went to alcohol rehabilitation treatment (Tr. 96). He attended a few Alcoholics Anonymous (AA) meetings, and he stayed sober for a year (Tr. 97-98). He did not complete AA step three (Tr. 137). From about 1997 to about 2002, Applicant consumed alcohol, but not excessively (Tr. 98-99). In 2002, he realized he needed alcohol "to feel normal" (Tr. 99). He began drinking alcohol at lunchtime during the duty day (Tr. 124-125). From 2002 to 2007, he received alcohol treatment about ten times (Tr. 100; SOR ¶ 1.b; HE 5).

In 2006, Applicant missed work on Mondays due to alcohol consumption, and had already been to alcohol-related treatment several times (Tr. 127; SOR ¶ 1.d). In March 2006, he was fired for absenteeism (Tr. 126-127; SOR ¶ 1.d; HE 5). Applicant was unemployed from March 2006 until December 2007 (Tr. 127). He drank alcohol often between March 2006 and December 4, 2007, and sometimes he drank a fifth of bourbon in one day (Tr. 128, 129).

Applicant has never been arrested for any alcohol-related conduct (Tr. 96). Applicant's history of alcohol consumption caused him to be estranged from his parents and brother (Tr. 101). Applicant did not hide or conceal his alcoholism from his coworkers (Tr. 102-105). Although he attended AA meetings five times per week several years ago, Applicant was not that serious about changing, and was just "along

¹Some 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.

for the ride” (Tr. 141). He attended the meetings; however, he did not actively participate in the AA meetings (Tr. 142). In December 2007, he really did change and he stopped drinking alcohol (Tr. 52-53, 57, 142).

W has known Applicant for 18 years (Tr. 44). W dated Applicant for a year (Tr. 44). They have maintained a friendly relationship over the years (Tr. 44-45). They work out at the gym twice a week (Tr. 53). W’s father was an alcoholic, and she understands and recognizes this disease (Tr. 46). At first, Applicant’s alcohol consumption was at a responsible, social level (Tr. 46-47). Later, his alcohol consumption increased, and he started missing work (Tr. 47). Applicant received alcohol treatment on several occasions (Tr. 49). Applicant is shy, quiet, and not social, even at social affairs (Tr. 50, 59). He was socially isolated (Tr. 58). Most of his alcohol consumption was at his home (Tr. 51). He has had intervals where he abstained from alcohol (Tr. 51). For example, about four years ago, he did not drink alcohol for 18 months (Tr. 51). Previously he abstained from alcohol consumption for one year before he resumed his alcohol consumption. In the last 27 months, he has made important changes. He has lost weight, stopped smoking, and is now in excellent physical condition (Tr. 54). He has more friends from the gym and AA (Tr. 55). He attends church with his brother (Tr. 55). He has a good relationship with his parents and brother; whereas, when he was drinking alcohol, his relationship with family was estranged (Tr. 56). Applicant was always honest about his alcohol consumption and his alcohol-related treatment (Tr. 61, 62).

Applicant ended his alcohol consumption on December 4, 2007, because he was tired of drinking alcohol (Tr. 102, 107, 111, 129, 143). His life was not progressing and “it wasn’t fun anymore” (Tr. 107, 129). He decided he needed to change or he would die (Tr. 108). He used up his savings and borrowed \$18,000 from his parents (Tr. 129-130). He has paid his parents \$6,000 and will repay the rest in two years (Tr. 130). He checked himself into an alcohol rehabilitation treatment program, where he stayed for three weeks (Tr. 108, 111). His follow-up treatment at AA had a very positive influence on his life (Tr. 113). He became less fearful and more confident (Tr. 113-114). He is now an avid runner and hiker (Tr. 115). He has lost 30 pounds (Tr. 118). He is not comfortable going to bars (Tr. 117). He is much more comfortable being in a social setting and meeting people (Tr. 136). His outlook is more positive, and his life is much happier (Tr. 136). He attends AA meetings four to seven times per week (Tr. 114, 135). Applicant recently received a two-year chip for his AA attendance and abstention from alcohol consumption (Tr. 115). He recently learned he was diabetic (Tr. 118). Consumption of alcohol risks potential adverse side effects because of his other medications (Tr. 119).

On October 21, 2009, a Doctor of Osteopathy (DO) signed a letter indicating Applicant was diagnosed with alcoholism (AE A). Applicant successfully completed inpatient rehabilitation treatment and required aftercare (AE A). There have been no relapses since December 2007 (AE A). Applicant continues to be an active member of AA (AE A). He has not seen the DO for medical or alcohol-related treatment since December 2007 (Tr. 112).

Applicant has been taking medication for his anxiety for the last four to five years (Tr. 132). His fears and social phobias have been reduced since he stopped consuming alcohol (Tr. 133). Applicant believes there is less than a five percent chance he will return to alcohol consumption (Tr. 145).

Applicant's older brother (B) discovered Applicant was having problems coping with his alcohol consumption in the mid-1990s (Tr. 67). They lived in different states and communicated with each other about once a month (Tr. 67). Once they lived in the same state, their contact became much more frequent (Tr. 68, 69, 71). B took Applicant to an alcohol-rehabilitation clinic on several occasions (Tr. 68, 69). Their relationship was strained because of his alcohol consumption (Tr. 73). Their relationship has dramatically improved since Applicant stopped his alcohol consumption (Tr. 72). B and Applicant attend church together every Sunday (Tr. 71). Applicant is more friendly and sociable now (Tr. 72, 76, 77). He is more physically fit (Tr. 74, 75). His outlook is more positive and hopeful, and he is happy (Tr. 75, 88). He has significantly changed for the better over the past 30 months (Tr. 74). Applicant was always open and honest about his alcohol consumption and treatments (Tr. 78). Applicant previously returned to alcohol consumption after being abstinent for 18 months (Tr. 81-82). B thought Applicant hit rock bottom in late 2007, and he was finally serious about ending his alcohol consumption (Tr. 84-85). He made amends with others, and he never did that before when he was abstinent (Tr. 85-86). He learned that he does not need alcohol as a social crutch (Tr. 87). Although B could not absolutely rule out Applicant's return to alcohol consumption, he did not believe he would return to alcohol because of all the positive changes in his life (Tr. 79-80).

Applicant's friend describes him as sober, generous, dependable, and caring. She recommends reinstatement of his security clearance (AE B).

Applicant's operations manager, a retired U.S. Army major general, indicates Applicant has worked for him since April 7, 2008 (AE C). Applicant "has been a primary implementer of some of our most innovative products [He is] a both a competent developer and presenter for the software that he builds and maintains" (AE C). Applicant is an intelligent, reliable, and responsible person (AE C). He recommends reinstatement of Applicant's security clearance (AE C).

Applicant's program manager has known Applicant since April 2008 (AE D). He lauds Applicant's work performance as diligent and dependable. Applicant has excellent fitness and trustworthiness. His conduct shows conscientious responsibility (AE D). He has observed Applicant's abstinent behavior—specifically, Applicant has rejected offers of alcohol at social events (AE D). His program manager has worked for the Department of Defense as a Marine and contractor for more than 30 years, and he recommends approval of Applicant's security clearance (AE D).

Medical records

On July 12, 2002, Applicant was admitted for inpatient alcohol treatment (GE 3 at 64). His history indicates Applicant was detoxified from alcohol three times over the

previous summer (of 2002) (GE 3 at 64). In July 2002, his physician diagnosed Applicant as alcohol dependent (GE 3 at 62, 66; SOR ¶ 1.c; HE 5). His July 16, 2002, discharge summary states:

[H]e has been unable to maintain any sort of prolonged sobriety. He has been detoxed at [redacted] multiple times and has been in the intensive outpatient programs but continues to relapse and experience ongoing difficulties. . . . He certainly does have ongoing difficulties with severe alcohol dependency that is complicated by what appears to be an avoidance/social phobic combination that makes it even more difficult for him to manage when he is sober. (GE 3 at 62).

Applicant was most recently an inpatient for alcohol treatment from December 4-14, 2007 (GE 3 at 12). The admission notes indicated that he most recently completed alcohol detoxification in May 2007 (GE 3 at 14). Applicant is drinking alcohol on a regular basis. The history states, "he will drink a quart to a half gallon per day, has to drink in the morning, cannot stop because of withdrawals. He's had significant withdrawal difficulties in the past with deliriums, agitation, nausea, although he's not reported seizures" (GE 3 at 14). His blood alcohol on admission was .210 (GE 3 at 15). His discharge summary notes:

Unfortunately, his alcohol dependency is complicated by an avoidant personality disorder that makes it difficult for him to integrate into a 12-step program. Over the last few years, [Applicant] has been able to maintain longer and longer sobriety. . . . I am hoping he is inching his way toward longer term recovery and it certainly appears that this is a possibility.

Axis I states, "Alcohol withdrawal – severe, Alcohol dependency – depressive disorder NOS. Mixed anxiety disorder" (GE 3 at 13).

Axis II states, "Avoidant personality disorder" (GE 3 at 13).

Axis III includes, "Alcoholic hepatitis" (GE 3 at 13).

Applicant's Alcoholics Anonymous sponsor's statement

Applicant's Alcoholics Anonymous (AA) sponsor (S) has a distinguished educational and corporate background, including two masters degrees, and he has held a top secret clearance (Tr. 21-22, 25). S is an alcoholic; however, S has been abstinent from alcohol consumption for 11 years (Tr. 22). S has been involved with AA for 20 years (Tr. 23). S stayed sober for brief periods of time and then relapsed before finally stopping his alcohol consumption 11 years ago (Tr. 23). S's alcohol dependency is not cured and never will be; however, it is currently in remission (Tr. 23-24).

S has known Applicant as part of AA meetings for three or four years (Tr. 22, 30). S believes Applicant has changed (Tr. 25). When he first met Applicant, Applicant was

depressed, withdrawn, defeated, had low self-esteem, and appeared to be unhealthy (Tr. 26, 32, 33). Applicant attended AA meetings, and then he left AA for awhile (Tr. 38). Applicant would then return to AA attendance (Tr. 38). Applicant's confidence, emotional awareness, and self-awareness of his alcohol dependence have increased since December 2007 (Tr. 25, 28). He has lost weight, and he has a better relationship with his family and friends (Tr. 35). He is healthier now (Tr. 26, 33, 34). He used to meet with Applicant on a daily basis, then it was weekly, and now it is "bi-weekly-ish" (Tr. 27). He believed Applicant attended meetings five days a week (Tr. 36). Applicant has some AA chips to show his continued sobriety (Tr. 37). He is now at an AA maintenance level (AA steps 10-12) (Tr. 37). He believed Applicant has been abstinent for 27 months (Tr. 27). The probability that Applicant would return to alcohol consumption was low—less than a one-in-four probability (Tr. 42). He recommended approval of Applicant's security clearance because he believes Applicant is honest and trustworthy (Tr. 29).

Falsification of security clearance application

On February 27, 2009,³ Applicant completed his security clearance application (SF 86) (GE 1) (Tr. 121). Section 25 asks, "In the last 7 years has your use of alcoholic beverages (such as liquor, beer, wine) resulted in any alcohol-related treatment or counseling (such as for alcohol abuse or alcoholism)?" Applicant answered, "Yes," and disclosed treatment in December 2007 at a nearby alcohol treatment program, and he provided the name of his counselor (GE 1). He did not disclose that he had received alcohol-related treatment on about ten other occasions (Tr. 105-106).

On May 7, 2008, an Office of Personnel Management (OPM) investigator interviewed Applicant and Applicant disclosed that he received alcohol-related treatment at a nearby treatment facility on "five or seven occasions over the last seven years" (Tr. 107; GE 2 at 3). He explained that he did not list the additional treatments on his SF 86 because of lack of space on his SF 86 (Tr. 105-106, 107). He did not notice the Additional Comments section after Section 30 of his SF 86 (Tr. 121). He believed that he may have mentioned to his security officer that he was unable to fully disclose his alcohol-related treatment because of lack of space on his SF 86 (Tr. 122). He believed the security officer advised him to tell the investigator when he was interviewed (Tr. 122). He understood even before he completed his SF 86 that he had to disclose all information requested (Tr. 105).

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

³An Office of Personnel Management (OPM) investigator interviewed Applicant on May 7, 2008, and October 22, 2008 (GE 2 at 3-14). He disclosed his prior alcohol treatments in detail to the OPM investigator (GE 2). Applicant believed the reason his SF 86 was dated after his OPM interview was because he provided the copy at GE 1 to his security officer on February 27, 2009 (Tr. 137-141; GE 1).

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 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 E (personal conduct) with respect to the allegations set forth in the SOR.

Alcohol Consumption

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

Seven Alcohol Consumption disqualifying conditions could raise a security or trustworthiness concern and may be disqualifying in this case. AG ¶ 22 provides:

- (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(a), 22(e), and 22(g) do not apply. Applicant did not have any alcohol-related incidents involving police intervention or arrest. A licensed clinical social worker did not diagnose Applicant as alcohol dependent. Applicant has not failed to comply with a court order not to consume alcohol.

AG ¶¶ 22(b), 22(c), 22(d), and 22(f) apply. Applicant missed work due to excessive alcohol consumption and was fired in March 2006. His alcohol consumption problem was diagnosed as alcohol dependent⁴ “by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist).” He had multiple relapses after diagnosis of alcohol dependence, detoxification, and treatment. In the past, Applicant habitually consumed alcohol to the point of impaired judgment. His binge alcohol consumption over many years and repeated relapses after treatment raise profound security concerns.

“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

⁴The well-respected psychiatric reference, *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition, Text Revision (DSM-IV-TR). Washington, DC, American Psychiatric Association, 2000, has defined “alcohol dependence” to be a psychiatric condition that meets the following diagnostic criteria:

A maladaptive pattern of alcohol use, leading to clinically significant impairment or distress, as manifested by three (or more) of the following, occurring at any time in the same 12-month period:

- (1) Tolerance, as defined by either of the following: (a) a need for markedly increased amounts of the alcohol to achieve intoxication or desired effect; or (b) markedly diminished effect with continued use of the same amount of the alcohol.
- (2) Withdrawal, as manifested by either of the following: (a) the characteristic withdrawal syndrome for the alcohol; or (b) the same (or a closely related) alcohol is taken to relieve or avoid withdrawal symptoms.
- (3) The alcohol is often taken in larger amounts or over a longer period than was intended.
- (4) There is a persistent desire or unsuccessful efforts to cut down or control alcohol use.
- (5) A great deal of time is spent in activities necessary to obtain the alcohol (e.g., visiting multiple doctors or driving long distances), use the alcohol or recover from its effects.
- (6) Important social, occupational, or recreational activities are given up or reduced because of alcohol use.
- (7) The alcohol use is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by the alcohol (e.g., continued drinking despite recognition that an ulcer was made worse by alcohol consumption).

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(b) and 23(d) apply; however, AG ¶¶ 23(a) and 23(c) do not apply. Applicant began consumption of alcohol at age 15 and he continued to consume alcohol with periods of abstinence of up to 18 months for the next 32 years. Applicant was diagnosed with alcohol dependency in July 2002. He received alcohol treatment on about ten occasions, and always had a relapse, until his December 2007 treatment. He acknowledges his alcohol dependency. He has now been abstinent from alcohol consumption for 27 months (since December 4, 2007). He completed the December 2007 alcohol treatment. He completed the 12-step AA program. He attends AA meetings at least five times a week, and he received a positive prognosis from a physician, who is a staff member of a recognized alcohol treatment program. He is making satisfactory progress in his alcohol rehabilitation program. He has established a pattern of abstinence. Despite these very positive developments, his extensive pattern of alcohol abuse, rehabilitative treatment, and relapse 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*.

Personal Conduct

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

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

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

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

Applicant failed to disclose his alcohol-related treatment before December 2007 on his February 27, 2009, SF 86 (SOR ¶ 2.a). AG ¶¶ 16(a) and 16(b) both apply. AG ¶ 17 provides seven conditions that could mitigate security concerns in this case:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Mitigating conditions AG ¶¶ 17(a) and 17(f) fully apply to the allegation that Applicant falsified his answer to the question on his SF 86 about his alcohol-related treatment before December 2007. He admitted preparing his February 27, 2009, SF 86. He provided derogatory information that placed the Department of Defense (DoD) on notice of his alcohol-related problems. He provided information about being fired in March 2006, and his alcohol-related treatment in December 2007. He did not add additional information about his alcohol-related treatment because he did not see space on his SF 86 for this information. He fully disclosed his alcohol treatment to an OPM investigator in 2008.⁵ He signed medical privacy waivers permitting DoD to obtain his alcohol-treatment records. I found his statement at the hearing to be credible. At the time he provided this particular incomplete information to security officials on his SF 86, he thought that the answer he provided met requirements. He did not intend to violate the rules, and did not have the necessary intent to deceive to establish the disqualifying conduct. Applicant has provided sufficient information to unsubstantiate the allegation in SOR ¶ 2.a.

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):

⁵The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

(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 E 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 disciplinary problems unrelated to alcohol-consumption, arrests or convictions, or any drug abuse. There is no evidence of financial problems, 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. He provided supportive statements from his project manager and operations manager, two very credible and impressive witnesses, who support retention of his security clearance. Applicant knows the consequences of excessive alcohol consumption. He has not had any alcohol-related offenses involving the police or the courts. He acknowledges his alcohol dependency. He has now been abstinent from alcohol consumption for 27 months (since December 4, 2007), which is a very positive development. He recognizes the importance of overcoming his alcohol problems and has established a pattern of abstinence.⁶ He completed the December 2007 alcohol treatment program and the 12-step AA program. He attends AA meetings at least five times a week, and he received a positive prognosis from a physician, who is a staff member of a recognized alcohol treatment program. He is making satisfactory progress in his alcohol rehabilitation program.

⁶For 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).

The evidence against approval of Applicant's clearance is more substantial at this time. Applicant has had a problem with alcohol use beginning when he was 15 years old. He ended his alcohol consumption when he was 47. He has consumed alcohol at times to excess, with some periods of abstinence, for 32 years. On December 4, 2007, when he began his most recent alcohol treatment his entry blood alcohol level was .210. A physician diagnosed him with being severely dependent on alcohol. He received intensive, inpatient alcohol detoxification therapy on about ten occasions; however, he had a relapse after all of those treatments except for the most recent session. His two longest periods of abstinence from alcohol consumption after the age of 15 are 18 months and 27 months, the current period of abstinence. His severe alcohol dependence and alcohol consumption is described in the alcohol-treatment notes, admission, and discharge summaries of his alcohol-treatment program.⁷ Statements from colleagues, friends, his AA sponsor, and a family member about his alcohol consumption and rehabilitation as well as changes in his social circumstances were very helpful and corroborated Applicant's statements.

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 full mitigation of security concerns is not possible unless there was a fairly lengthy period of abstaining from alcohol consumption.⁸ Applicant's alcohol consumption is not recent; however, his past excessive alcohol consumption was frequent, extreme, and of long duration. His extensive rehabilitative efforts and changes in behavior are important manifestations reducing concerns. However, his history of alcohol consumption is extensive, and his relapses after about ten inpatient treatments are not infrequent. Accordingly, the likelihood of recurrence of alcohol consumption is still sufficiently probable to require more time with continued abstinence. Lingering doubts remain concerning his current reliability, trustworthiness, or good judgment. One more year of abstinence (from the date of this decision) is needed to provide sufficient assurance that he will not return to alcohol consumption.⁹

I conclude Applicant has not fully mitigated the security concerns pertaining to alcohol consumption. He has mitigated security concerns relating to personal conduct. I

⁷See Federal Rule of Evidence 803(4) and commentary explaining why statements made to obtain medical treatment are deemed reliable.

⁸See 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).

⁹Of course, my recommendation to approve Applicant's clearance in the future is not binding on the government. If Applicant's company sponsors him for a clearance one year after the date of this clearance, approval of a clearance at that time will be based on all the facts and circumstances at that point in time. An administrative judge does not have authority to commit the government to approval of a clearance at some future date. See *generally* ISCR Case No. 08-07540 at 2 (App. Bd. Jan. 8, 2010); ISCR Case No. 04-03907 at 2 (App. Bd. Sep. 18, 2006) (stating, "The Board has no authority to grant [a]pplicant a conditional or probationary security clearance to allow [him or] her the opportunity to have a security clearance while [he or she] works on [his or] her financial problems." and citing ISCR Case No. 03-07418 at 3 (App. Bd. Oct. 13, 2004)).

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”¹⁰ 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.

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.d:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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.

MARK HARVEY
Administrative Judge

¹⁰See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).