



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 09-01565
)
)
 Applicant for Security Clearance)

For Government: Braden M. Murphy, Esquire, Department Counsel
 For Applicant: *Pro Se*

February 25, 2010

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence as a whole, eligibility for access to classified information is granted.

On August 17, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Appellant a Statement of Reasons (SOR), detailing security concerns under Guideline G (Alcohol Consumption), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct). The action was taken 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on September 8, 2009, and requested a hearing before an administrative judge. On October 9, 2009, DOHA assigned the case

to another administrative judge, and reassigned it to me on October 22, 2009. DOHA issued a Notice of Hearing on October 29, 2009. The case was heard on November 19, 2009, as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 16 in evidence without objection. Applicant testified and offered Applicant Exhibit (AE) A in evidence without objection. The record remained open until December 3, 2009, to give Applicant an opportunity to submit additional documents. Applicant timely submitted four exhibits that I marked as AE B through E and admitted in evidence without objection. DOHA received the hearing transcript on December 2, 2009.

Findings of Fact

In his Answer to the SOR, Applicant admitted all allegations contained in ¶ 1 of the SOR and ¶ 2(b). He denied all other allegations. His admissions are incorporated into the following findings of fact concerning all the allegations:

Applicant is 34 years old and married since April 2003. He has three children, ages, 5, 3, and 18 months. He has earned some college credits. He honorably served in the U.S. Marines from 1996 until June 2000. He was recalled to active duty in November 2001 and served until June 2004 as a sergeant. After being recalled to active duty, Applicant deployed to a very volatile city in Iraq and served in combat. He was a small computer systems specialist and held a clearance throughout his military career. (Tr. 60.) He was awarded the Combat Action Ribbon for his service in Iraq. (Tr. 28-29.) Since his discharge, he has worked for federal contractors in the area of information technology. He began a position as a Defense Information Assurance Certification and Accreditation Process (DIECAP) Engineer with his current employer in October 2008, performing work for the U.S. Army. (Tr. 31.)

Applicant completed three security clearance applications: (1) a Questionnaire for National Security Positions (SF-86) on July 8, 1996 (GE 7);¹ (2) a Standard Form 86 (SF-86) on April 18, 2005 (GE 9); and (3) an Electronic Questionnaire for Investigations Processing (e-QIP) on October 16, 2008 (GE 1). He completed a Declaration for Federal Employment (DFE) on May 16, 2005. (GE 10.) He found the forms confusing and did not receive assistance while completing them. (Tr. 36).

On December 1, 2007, DOHA issued Applicant a SOR raising security concerns under Guidelines E and Guideline J. (GE 15.). Applicant answered that SOR on December 18, 2007. (GE 16.) Subsequent to filing the SOR, Applicant's employer reassigned him to a position that did not require a clearance, resulting in the termination of the hearing process. (Tr. 63.) The allegations raised in the August 2009 SOR essentially re-allege the Guideline E and Guideline J allegations contained in the December 2007 SOR.

¹After Applicant submitted this security clearance application, the Navy acknowledged a 1992 DUI, a March 1993 Careless Driving charge, and a May 1995 charge for Minor in Possession, and recommended issuance of a security clearance. On July 2, 1997, the adjudicator of the case stated that "Although subject has been involved in three reported incidents (two alcohol related), it has been two years since last incident. Subject's behavior can also be attributed to immaturity." (GE 8.)

Applicant began consuming alcohol at the age of 17. He drank several beers four or five times a month during high school. After joining the Marines, he increased the frequency and amount of alcohol he consumed. (GE 3) He drank six to twelve beers when he was off duty. (Tr. 72.) His alcohol consumption decreased substantially in June 2000, when he left military service after his first enlistment. From then until June 2004, he consumed alcohol two or three times a week, having one or two beers. After his discharge in June 2004, he began consuming greater amounts of alcohol on a daily basis. (GE 3.) He admitted that up to August 2009, he periodically consumed alcohol to the point of intoxication. (Tr. 34.)

Applicant has a history of alcohol-related incidents. In 1992, he was arrested and charged with Driving Under the Influence (DUI) when he was 17 years old and in high school. He pleaded guilty to a lesser charge of Operating Under Influence Liquor and was sentenced to community service and fined. He and his friends had been consuming alcohol at a party before the arrest. (GE 3.) He reported this arrest on his July 1996 SF-86. (GE 7.)

In 1995, Applicant was charged with Minor in Possession (MIP) (of alcohol) after he and his friends were stopped by the police. They had been consuming alcohol at a bar. (Tr. 66.) He was 20 years old. He pleaded guilty and was fined. (Tr. 38.) He reported this charge on his July 1996 SF-86. (GE 7.)

In May 1998, Applicant was arrested and charged with Assault and Drunk and Disorderly Conduct after he became embroiled in an altercation outside his barracks with a taxi driver about a fare. (Tr. 68.) He had been consuming alcohol before the arrest. (Tr. 69.) He received a Non-Judicial Punishment (NJP) and a 30-day restriction to his barracks that was suspended. His promotion to corporal (E-4) was delayed for three months. (Tr. 39.) More than a year later, in July 1999, Applicant was ordered to attend a five-day inpatient treatment program as a result of this charge. He complied with the order. (Tr. 40-41; GE 5.) He was 24 years old.

In March 1999, Applicant, along with three other Marines, was arrested by local police and charged with Open Container of liquor. They spent the night in jail. He paid a \$250 to \$350 fine and was released the following day. He was not consuming alcohol in the car at the time of the arrest, but had been drinking in a bar prior to getting into the car. (Tr. 39-40; GE 3.)

In May 2001, Applicant was arrested and charged with (1) Stealing, Felony, and (2) Fraud Credit Device, Felony. He was found guilty in March 2003, and given a Suspended Imposition of Sentence with five years probation. Prior to the arrest, he had been living with his girlfriend, whom he claimed authorized his use of her credit card on occasion. (Tr. 74.) He broke up with her in April 2001 and was arrested ten days later. (Tr. 48.) The matter was not resolved until March 2003 because he was deployed in September 2001. (Tr. 48-50.) He completed the probationary term in 2008. (Tr. 50.) He did not list this arrest on the April 2005 SF-86, but did list it on the October 2008 SF-86. (GE 9, 1.)

In November 2008, Applicant met a government investigator to discuss his use of alcohol and any undisclosed incidents relating to it. Applicant disclosed the 1992 and 1995 charges. He told the investigator that he did not include them on the April 2005 SF-86 because he thought they were outside the seven-year time frame of Question 23. He acknowledged that he misread the questions, but emphasized that he did not intentionally fail to disclose them. (GE 3 at 76.) He also discussed and disclosed the 1998 NJP. (*Id.*)

From April 26, 2007, to April 30, 2007, Applicant entered a treatment program for alcohol abuse after he ceased drinking for three days and experienced alcohol withdrawal. Prior to his admission, he was consuming six to twelve beers on a daily basis. (Tr. 43; GE 12.) A physician subsequently diagnosed him as Alcohol Dependent and Diabetic. (GE 14.) After leaving inpatient treatment, he immediately entered a five-day recovery program with a recommendation that he attend at least three AA meetings per week. (GE 14.) According to the Discharge summary, "he made good progress for the short time he was here. He successfully completed treatment." (GE 14 at 62.) He received a "Fair" prognosis. (*Id.*) He remained sober from April 26, 2007, to March 2008, and then began consuming alcohol on a regular basis. (Tr. 44, 92.) He continued to attend AA sporadically. In December 2008, he decided to stop consuming alcohol, which he did for periods of time, and also ceased attending AA. (Tr. 45, 93.)

In July 2009, Applicant was diagnosed with Post-Traumatic Stress Disorder (PTSD), as a result of his combat experience in Iraq. (Tr. 101.) He believes that the deployment may have increased his consumption of alcohol, but cannot conclude that it is the sole reason for his previous drinking habits. (Tr. 102, 105.) He has participated in five to ten psychotherapy sessions for PTSD. He now attends sessions once a month, in addition to participating in AA.

On September 4, 2009, Applicant voluntarily entered a substance abuse treatment program because "it became clear that I needed to seek professional assistance for my substance abuse." (Tr. 46.) He again received a diagnosis of Alcohol Dependent. He was discharged on September 18, 2009. According to the Discharge Summary, he "left in stable and improving condition" with a recommendation to continue individual therapy, attend AA, and obtain a sponsor. (AE B.) He has attended AA meetings every day since then. His date of sobriety is August 30, 2009. By the time of the hearing, he had been sober for 80 days. (Tr. 34-35) His AA Sponsor, also a Marine veteran, strongly supports his recovery progress and efforts. (AE E.) Applicant admitted that he is an alcoholic. (Tr. 36.) His command and employer are aware of his treatment for alcohol abuse.² (Tr. 97.)

Applicant takes full responsibility for his behavior. (Tr. 103-105.) He is fully committed to sobriety, a program of abstinence, and AA. Although he received treatment for alcoholism in April 2007, he did not fully commit to recovery until August

² After his voluntary admission, Applicant self-reported his conduct to the Command and his employer because he knew "that it would have some impact on the security clearance proceedings." (Tr. 34.)

2009 when he realized that his diabetic Type 2 condition was related to his alcohol consumption. It took him time to admit his alcoholism . (Tr. 105-108.)

The SOR alleged that Applicant falsified three answers on his April 18, 2005 SF-86, one answer on his October 16, 2008 e-QIP, and one answer on the May 16, 2005 DFE. Applicant repeatedly denied that he intentionally failed to disclose requested information. (Tr. 52.) He did not have any assistance in completing the forms.

(SOR ¶ 3.a) In response to *Section 23: Your Police Record: “(d) Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs,”* Applicant answered “no” on the April 2005 SF-86. He did not disclose the March 1999 alcohol charge. In his Answer to the 2007 SOR, he stated that he did not disclose this incident on the April 2005 SF 86 because he thought it was more than seven years old and outside the requested time frame.³ (GE 9) He testified that it was an obvious oversight. (Tr. 53.) Although this question does not include a time frame, his confusion is plausible, given the seven-year time frame listed in two of the questions in this section. His explanation is credible.

(SOR ¶ 3.b) In response to *Section 23: Your Police Record: “(e) In the last 7 years, have you been subject to court marital or other disciplinary proceedings under the Uniform Code of Military Justice?” (include non-judicial, Captain’s mast, etc.),”* Applicant answered “no” on the April 2005 SF-86. He did not disclose the May 1998 Non-Judicial Punishment. He thought the incident also fell outside a seven-year time frame. (Tr. 53; GE 16.) His explanation is credible, as the incident occurred one month short of the seven-year time frame.

(SOR ¶ 3.c) In response to *Section 23: Your Police Record: “(f) In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s) not listed in response to a, b, c, d, or e above?”* Applicant answered “no” on the April 2005 SF-86. He did not disclose the May 2001 arrest. According to his answer to the December 2007 SOR, he stated that he did not disclose the information “because of the conditions of that court proceeding. I was informed by the judge that this would be removed from my record if I had no problems with the law for the next 5 years.” (GE 16.) He did not think that he was convicted because he received a suspended sentence. (Tr. 54-55.) During his testimony, he admitted it was an oversight and not an intentional misrepresentation. (Tr. 84.) His explanation is credible.

During cross-examination, Department Counsel asked Applicant why he answered Sections 23(a) and (c) in the negative. After reading Section 23(a) at the hearing, “*Have you ever been charged with or convicted of any felony,*” Applicant stated that he thinks that he overlooked the word “charged” and “concentrated on the word ‘convicted.’” (Tr. 82) In response to Section 23(c): “*Are there currently any charges pending against you for any criminal offense,*” he answered “no.” He did not understand

³Section 23 on the April 2005 SF-86 includes six questions. Sections 23(a) through (d) inquire about charges in general; Sections 23(d) and (e) limit inquiry into specific areas “In the last 7 years”. (GE 9.)

that the charges were still pending in April 2005 as he had received a suspended sentence in 2003 and thought the matter was legally resolved.⁴ (Tr. 83.) His explanation is credible.

(SOR ¶ 3.d) In response to Question 9, *“During the last 10 years, have you been convicted, been imprisoned, been on probation, or been on parole? (Includes felonies firearms or explosives violations misdemeanors and all other offenses.)”* on the May DFE, he answered “no.” (GE 10.) He did not list the March 1999 arrest or the May 2001 offense. The Department Counsel acknowledged that Applicant was not required to disclose the March 1999 arrest because it did not result in a conviction. (Tr. 86.) When asked why he did not list the 2003 felony on the Declaration for Federal Employment, he said, “This would have been an oversight. I just now actually saw the word ‘probation’ on there. Because it was my understanding that I was not convicted, I was not imprisoned or on probation. I didn’t see the [word] probation and I definitely was not on parole at the time.” (Tr. 56.) His explanation is credible, in view of the explanations he articulated regarding his responses to the 2005 SF-86, which he completed a month before.

(SOR ¶ 3.e) In response to Section 23: Your Police Record: *(a) Have you ever been charged with or convicted of any felony offense? (Include those under the Uniform Code of Military Justice),* on the October 2008 e-QIP, he answered “yes.” He disclosed the April 2001 felony, as requested, and gave an explanation of the charge, but did not include information about the suspended sentence or the probationary term he received. He assumed that “probation may be a part of any sentencing.” (Tr. 88.) He thought that because the probationary term had terminated earlier in the year, it was not necessary to list it. (Tr. 86.) He disclosed sufficient information to comply with the disclosure requirements of said question.

After listening to Applicant testify and observing his demeanor, I find that his explanations for failing to disclose specific information, as to the allegations set forth in SOR ¶¶ 3.a, 3.b, 3.c., 3.d, and 3.e, are credible. In response to a general question about these omissions, he stated, “Again I don’t recall some of these documents being actually filled out. I recall the documents. But it’s never my intention to willfully deceive the Government or the Department of Defense.” (Tr. 106.)

Applicant was candid and remorseful about his past behavior. He takes full responsibility for his problems. During his closing argument, he emphasized his military service and dedication to this country. He stated:

The simple fact remains for me is the fact that I have willfully and knowledgeably, knowingly put my life actually on the line in defense of this country. And there is no greater sacrifice that I think anybody can make other than that, other than to die for country in combat. (Tr. 114-115.)

⁴Applicant’s negative answers to these two questions are not included in the SOR as falsification allegations.

Applicant submitted letters from his project manager and team leader, strongly supporting his request for reinstatement of his security clearance and addressing his integrity and work ethic. His project manager has known him since October 2008. In a November 25, 2009 letter, he wrote:

In addition to his tireless effort, [Appellant] is a consummate team player who goes the extra mile for his colleagues. I would rank him in the top 5% of all employees I have worked with and wish I could find ten more like him. I served as a Non-commissioned Officer in the US Army where I was deployed in support of Operation Iraqi Enduring Freedom. I can honestly say that there is no one I would rather have in my foxhole than [Appellant].
(AE D)

Applicant's team leader for the past year stated in his November 25, 2009 letter that he ranks Applicant "as one of the top performers within the ACA Office. (AE C) They are aware of his alcohol issues. (Tr. 97.)

In his Closing Argument, Applicant stated, "I put my country first in every ordeal, every matter. And there would never, ever be anything in my life that I would trade: any knowledge that I maintained from the Department of Defense with anybody else." (Tr. 114.) He went on to say that "today's a lot different than it was in 2005 when I filled out those documents. My life's a lot different. I am sober today . . . I do my job with the utmost diligence, the utmost respect for the Department of Army and the Department of Defense." (Tr. 115.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

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

the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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

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 an 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.

Analysis

Guideline G, Alcohol Consumption

The security concern pertaining to the guideline for 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.

Department Counsel argued that the evidence established security concerns under four Guideline G Disqualifying Conditions (DCs) as set forth in 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;

(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; and

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

Applicant was involved in four criminal incidents involving alcohol: 1992, 1995, 1998, and 1999. DC 22(a) is established. Applicant consumed alcohol periodically to the point of impaired judgment, up to August 2009, raising a concern under DC 22(c). In 2007, a physician diagnosed Applicant as Alcohol Dependent. Security concerns under DC 22(d) are supported by the record. Subsequent to that diagnosis, Applicant relapsed, establishing a concern under DC 22(f).

The evidence supporting those four disqualifying conditions requires a closer examination and balancing of resulting security concerns with any potentially mitigating matters, and shifts the burden to Applicant to rebut, explain, extenuate, or mitigate those concerns. AG ¶ 23 includes four Mitigating Conditions (MC) that could rebut or mitigate security concerns arising from his alcohol consumption:

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

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

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

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

Applicant's background includes four alcohol-related incidents that occurred between 1992 and 1999. Eleven years have passed since the last incident, which trigger the application of MC 23(a) to those allegations. Applicant recognizes his history

of alcoholism, understands the effect it has on his health and life, and takes responsibility for his actions. He has diligently pursued a program of alcohol rehabilitation since August 2009. He successfully completed an inpatient program, participates in psychotherapy for PTSD, regularly attends AA, works with an AA sponsor, and has remained abstinent since the end of August 2009. His efforts warrant a partial application of MC 23(b) and MC 23(d) given the brevity of his program to date. The evidence does not support the application of MC 23(c).

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct:

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

AG ¶ 31 describes a condition that could raise a security concern and may be disqualifying:

(a) a single serious crime or multiple lesser offenses.

Applicant admitted that he was arrested and charged four times for minor criminal infractions between 1992 and 1999, and that he was arrested and convicted of a felony in 2003 for an incident that occurred in 2001. The evidence is sufficient to establish DC 31(a).

AG ¶ 32 provides two mitigating conditions that could mitigate security concerns arising under this guideline:

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

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

MC 32(a) has application. The last criminal arrest occurred in May 2001. Nine years have passed and there is no evidence of any other criminal allegations. The incident involved Applicant's former girlfriend and occurred under circumstances unlikely to recur. That conduct does not cast doubt on his current trustworthiness or good judgment. Applicant provided evidence of on-going rehabilitation for his alcoholism, which was related to the four other charges. He has been married for seven years and has three children. He was released from the court-imposed probation in

2008. His supervisors attest to his current good employment record and integrity. He did not hesitate to express remorse over his conduct and a commitment to monitoring his future behavior. MC 32(d) also applies.

Guideline E, Personal Conduct

The security concerns pertaining to the personal conduct guideline are set out in AG ¶ 15:

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

The government alleged in SOR ¶ 3 that Applicant deliberately falsified answers to questions on his April 2005 SF-86, May 2005 DFE, and October 2008 SF-86 because he failed to disclose sufficient information about his criminal history. The government contended that those falsifications constituted a potential disqualifying condition under AG ¶ 16:

(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.

Although Applicant acknowledged that he did not disclose the information, he denied that he intentionally misled the government. When a falsification allegation is controverted or denied, as in this case, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the omission occurred. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004).

Applicant's testimony, along with prior evidence of truthful disclosures, consistent denials that he did not intentionally falsify his security clearance forms, seven years of military service, statements from his employer regarding his integrity, self-reporting his inpatient treatment, and his confusion and misreading of the questions, is credible. The record evidence does not establish the allegations of deliberate falsification contained in SOR ¶ 3. This guideline is found in his favor.

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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They include the following:

- (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.

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

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. Applicant is a 34-year-old mature young man, who honorably served the United States Marine Corps for seven years, while holding a security clearance. During his last term of duty, he witnessed combat in a hostile situation, resulting in a subsequent diagnosis of PTSD. He has been married for almost seven years and has three young children. He does not hesitate to articulate his solid commitment to the defense of the United States. Since leaving military service in June 2004, he has successfully worked for federal contractors that support the U.S. Army. His supervisors are impressed with his work and trust him implicitly. These are impressive facts in his background.

Applicant also has a history of alcohol-related incidents that occurred between 1992 and 1999, the last one occurring about ten years ago. He has a 2003 conviction for a felony for an incident that occurred in 2001, nine years ago. He received a suspended sentence and completed a probationary term in 2008. Since his last in-patient treatment for alcoholism in August 2009, he has come to terms with his disease, diabetes, PTSD, and the overall effect that these issues have had in his life. He is seriously committed to health, recovery, and his family.

After considering all the evidence of record, including Applicant's credible testimony, his military career, the presence of rehabilitation and maturity, his employer's support, I find that it is unlikely any similar lapse in good judgment involving alcohol or other form of misconduct will occur. His criminal problems are behind him. He continues to participate in a recovery program for alcohol dependence and PTSD. He candidly recognizes his mistakes and is addressing his character shortcomings. This former Marine is not a security risk.

Overall, the record evidence leaves me without questions as to Applicant's eligibility and suitability for a security clearance at this time. For these reasons, I conclude Applicant mitigated the security concerns arising under the alcohol consumption, criminal conduct, and personal conduct guidelines.

Formal Findings

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

Paragraph 1, Guideline G:	FOR APPLICANT
Subparagraphs 1.a through 1.i:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraph 3.a	For Applicant
Subparagraph 3.b	For Applicant
Subparagraph 3.c:	For Applicant
Subparagraph 3.d:	For Applicant
Subparagraph 3.e:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

SHARI DAM
Administrative Judge