



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



In the matter of: )  
)  
) ISCR Case No. 10-01275  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Richard A. Stevens, Esquire, Department Counsel  
For Applicant: Alan V. Edmunds, Esquire

January 24, 2012

**Decision**

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

**Statement of the Case**

On August 11, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for his position with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Defense Office of Hearings and Appeals (DOHA) issued an interrogatory to Applicant to clarify or augment potentially disqualifying information in his background. After reviewing the results of the background investigation and Applicant's response to the interrogatory, DOHA could not make the preliminary affirmative findings required to issue a security clearance. On May 16, 2011, DOHA issued a Statement of Reasons (SOR) to Applicant detailing security concerns for alcohol consumption under Guideline G and personal conduct under Guideline E. On August 8, 2011, DOHA amended the SOR adding two additional allegations under Guideline E. These actions

were 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 adjudicative guidelines (AG) effective in the Department of Defense on September 1, 2006.

The initial SOR contained five allegations of alcohol consumption under Guideline G (SOR 1.a, 1.b, 1.c, 1.d, and 1.e). Applicant answered the SOR on May 24, 2011, admitting the allegations with explanation. The initial SOR also alleged six allegations under Guideline E. SOR allegations 2.a, 2.b, and 2.c allege motor vehicle or driving violations. SOR 2.d cross allege SOR allegations 1.b, 1.c, 1.d, and 1.e. In his May 24, 2011 response to the SOR, Applicant admitted these allegations with explanation. The initial SOR also contained two allegations under Guideline E for providing false or misleading information on his security clearance application (SOR 2.e and 2.f) In his answer to the SOR, Applicant admitted the incorrect answers on the security clearance application but explained that his answers were an honest mistake and not provided deliberately with the intent to deceive. The August 8, 2011, additional allegations under Guideline E allege that Applicant was arrested and charged with possession of pornographic material (SOR 2.g), and as a result of that allegation, Applicant was terminated by his employer (SOR 2.h). In his August 12, 2011, answer to the additional SOR allegations, Applicant admitted the arrest and termination but stated that the child pornography allegation was false and the termination was based solely on the wrongful pornographic allegation.

Applicant requested a hearing before an administrative judge. Department Counsel was prepared to proceed on August 31, 2011, and the case was assigned to me on September 28, 2011. DOHA issued a Notice of Hearing on October 20, 2011, for a hearing on November 10, 2011. I convened the hearing as scheduled. The Government offered 14 exhibits which I marked and admitted into the record without objections as Government exhibits (Gov. Ex.) 1 through 14. One witness testified for the Government. Applicant testified and offered seven exhibits which I marked and admitted into the record without objection as Applicant exhibits (App. Ex.) A through G. I kept the record open for Applicant to submit additional documents. Applicant timely submitted two additional documents which I marked as App. Ex. H and I. Department Counsel objected to the admission of both documents as hearsay information. (Gov. Ex. 15, Memorandum, dated December 9, 2011) DOHA received the transcript of the hearing (Tr.) on November 21, 2011.

### **Evidentiary Issues**

Applicant Exhibit H is a letter from an attorney representing Applicant in a civil action. The letter states that the civil action was filed against the local police department and a local police officer that was the Government witness at the hearing. The civil action was filed because Applicant believed the police officer lied in an affidavit to secure a warrant to search Applicant's house and computers for evidence of child pornography. The letter also alleges that the police officer intentionally continued the

criminal action against Applicant after not finding evidence against Applicant in the search. I determine that the letter will not be admitted. The police officer testified at the hearing and his credibility on the issue was raised and considered. The content of the letter is cumulative with his testimony, and is only an allegation without proof.

Applicant exhibit I is the complaint filed in the Applicant's civil action against the local police department and the police officer. The document is merely evidence that the civil case was filed as testified by Applicant at the hearing. The document is admitted for the limited purpose of establishing that the case was filed but not to establish facts contained in the pleadings.

### **Findings of Fact**

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact. Applicant's admissions are included in my findings of fact.

Applicant is 37 years old. He served six years on active duty in the Marine Corps as a communications specialist, and was honorably discharged as a corporal (E-4). He was offered a promotion to Sergeant (E-5) if he stayed on active duty, but he decided to leave the Marine Corps. He married in May 1999, has one child, but is now separated. After leaving active duty in February 1998, he worked for a private business for approximately five years until January 2003. He then worked for a Government contractor for five years as a planner before moving to employment with a defense contractor as a project coordinator in August 2008. He worked for the defense contractor until he was terminated in March 2009. He was then employed by another defense contractor as an acquisition planner but is on administrative leave pending the outcome of his request or a security clearance. He received an associate's degree in computer information systems in 2003, a professional certificate as a project manager in 2008, and a bachelor's degree in management in 2010. (Tr. 78-81; Gov. Ex. 1, e-QIP, dated August 11, 2008; App. Ex. D, Resume, undated; App. Ex. E, Certificates and diplomas, various dates)

Applicant's duty performance has been highly rated. His latest performance appraisal received the highest company rating of very good which shows his performance always exceeds standards. (App. Ex. B, Performance Review, dated November 3, 2012) His performance rating from his previous employer was also excellent. (App. Ex. C, Performance Rating, dated October 3, 2007)

Applicant admits that he consumed alcohol, at times to excess and to the point of intoxication, from approximately 1996 until 2006 (SOR 1.a, and SOR 2.d). He admits that in March 1996, he was convicted for having no operator's license and charged with open container after consuming alcohol (SOR 1.b and SOR 2.d). He admits that in July 1997, he was found guilty of an open container violation (SOR 1.c and SOR 2.d). He admits that in September 2003, he was charged with possession of cocaine, driving under the influence of alcohol, driving while on a revoked license, driving with expired

tags, violation of mandatory insurance, and an open container violation. He pled guilty to the possession of cocaine charge, and sentenced to attend an 18-month drug court program. The remaining charges were nolle prossed (SOR 1.d, and SOR 2.d; Gov. Ex. 11, Arrest Report, dated September 7, 2003). Applicant admitted that in May 2006, he was charged with driving under the influence of alcohol, and another driving-related offense. He was fined \$600 and sentenced to a suspended 60 day jail term. At the time of this incident, he had not completed the drug program. Since the program was not completed, he was required to complete the drug court program and placed on probation for one year (SOR 1.e and SOR 2.d). (Tr. 50-54)

Applicant stated he was a weekend drinker, but noticed a pattern of increased alcohol consumption, and that he was slowly becoming dependent on alcohol. The 1997 arrest for alcohol consumption and open container took place while Applicant was on active duty in the Marine Corps and concerned consumption of alcohol with fellow Marines on a beach where it was prohibited. After the 1997 incident, he stopped drinking for some time, and became more physically fit. The only times he drank alcohol thereafter led to the 2003 and the 2006 incidents. He drank alcohol in 2006 because it was a holiday and he had a friend visiting him. After the 2006 incident, he decided that he was done with alcohol consumption and has refrained from consuming alcohol for the last five years. (Tr. 70-73, 80 84)

The possession of cocaine charge in 2003 at SOR 1.d arose from his consumption of alcohol. He denies ever using any controlled substance except for marijuana use in high school. In 2003, Applicant and his cousin had been drinking alcohol and Applicant drove his car. He knew his cousin, also a former Marine, had problems in the past with controlled substances. He was stopped for a traffic offense. Applicant believes he would not have been stopped by the police if it were not for his consumption of alcohol. When he got out of the car, his cousin remained in the car. When the police officer returned to the car, he saw a vial of crack cocaine on the center console. Applicant could only assume that his cousin placed it there. Applicant and his cousin both denied possession of the cocaine to the police officer. Since neither admitted possession of the cocaine, both were charged with possession of cocaine. On the advice of his attorney, Applicant pled guilty to the charge so he could be placed in a drug court program. He was advised by his attorney that he would get a clean record when he completed the drug court program. Since Applicant pled guilty to the possession of cocaine, his cousin's case of possession was nolle prossed.

After Applicant was arrested for driving under the influence of alcohol in 2006, he completed the drug court program as required. He participated in the local Alcoholic Anonymous (AA) meetings for about 18 months after this incident. Since then, he participates about once a week in on-line AA forums. He was diagnosed with alcohol abuse in 2003. He no longer considers himself an alcohol abuser, but he has the tendency to drink alcohol so he has refrained from drinking alcohol. His last consumption of alcohol was in May 2006. (Tr. 55- 56, 65-70, 73-78, 84-88; Gov. Ex. Arrest Report, dated May 27, 2006; Gov. Ex. 10, Court Findings and Sentence, dated October 4, 2010; Gov. Ex. 12, Plea Agreement for Drug Court, dated January 6, 2007;

Gov. Ex. 13, Court Calendar, dated June 2, 2010; App. Ex. G, Completion Certificate for Drug Court, dated October 8, 2008)

Applicant admits that from 2001 until 2003, he knowingly operated a vehicle without insurance, proper tags, and while his license was revoked (SOR 2.a). In May 2001, he was charged with and fined for driving on a suspended license and for failing to appear on the charge. He was convicted and fined \$135 (SOR 2.b). He was charged in October 2002 with driving with a revoked license. The charge was nolle prossed. (SOR 2.c; See Response to SOR, dated May 24, 2011)

SOR allegation 2.e concerns Applicant's answer on his August 11, 2008, security clearance application to Question 23a. Applicant answered "no" to the question which asks if he had ever been charged with or convicted of a felony. Applicant had been charged and convicted of a felony for possession of cocaine in 2003. SOR allegation 2.f concerns his response to Question 23(d) which asks if he had ever been convicted of an offense related to alcohol or drugs. He answered "yes" listing the 2006 driving while intoxicated offense and the 2003 possession of cocaine offense. He did not list other alcohol-related driving offenses. In his response to the SOR, Applicant states that his incorrect response to Question 23a was an honest mistake and not done deliberately with the intent to deceive. He noted that he listed the felony conviction in response to another question and also discussed the offense with security investigators. He did not list all of his alcohol-related offenses because he did not remember them. He listed the offenses he remembered.

SOR allegation 2.g concerns a charge and arrest for possession of pornography. SOR allegation 2.h concerns Applicant's termination by his employer based on the possession of pornography charge. The SOR allegations list the offense as possession of pornography. However, the actual charge and discussion of the offense during the hearing was possession of child pornography. (Tr. 93-95)

A local police officer with 16 years of law enforcement experience testified that he is assigned to the child abuse unit of the major crimes division of the police department. His unit is responsible for investigating child abuse and child sex abuse allegations. An internet service provider that discovers a case of child pornography or sexual exploitation will forward the internet protocol address of the violator and other information to the National Center for Missing and Exploited Children. The National Center will in turn send the information to the state Internet Crimes Against Children Task Force. The task force issues a subpoena to the internet service provider for information concerning the computer address, time, and date of the child pornography computer transaction. Once the information is received along with any images captured by the service provider, the state agency sends the information to the local police for investigation. (Tr. 19-23)

Applicant's internet service provider noted that child pornography was accessed at the computer address assigned to Applicant on January 20, 2009. They notified the National Center for Missing and Exploited Children and provided information on the

internet address and copies of the images that were accessed. The National Center notified the state Internet Crimes Against Children Task Force. On February 27, 2009, the police officer received information from the state agency concerning the child pornography accessed by a computer located at the internet protocol address belonging to Applicant. He verified that Applicant lived at the address and prepared a request for a search warrant. The information included the images accessed at the internet address and captured by the internet service provider. The images were of young children, some very young and infants, from the age of one to age 12, in full nudity with exposed genitals. Some images were of children engaged in sexual acts with adults. The information was presented to a judge to issue a search warrant. On March 10, 2009, the judge examined all of the information and issued a search warrant for Applicant's house which was the location of the internet address. (Tr. 23-27, 3-45; Gov. Ex. 5, Arrest report, dated March 18, 2009)

The witness and other local police officers executed the search warrant on March 16, 2009. Upon entering the house, they noted that there were no wireless computer routers. There were two laptop computers in the house, but only one appeared to be in working order. The laptop that was not working was used by Applicant when he was in school. The working laptop computer was hard wired directly to the internet. It did not access the internet using a wireless connection. Since the computer was hard wired and not wireless, it could not be accessed from a remote location outside the house. The witness could not state that on January 20, 2009, when the child pornography was accessed, that the computer was hard wired and not on a wireless router. Applicant testified that his computer had not always been hard wired to the internet. It was wireless before he switched to the internet service provider that reported the access of child pornography. The two computers, some other electronic equipment, and copies of adult pornography were seized under the search warrant. The computers were sent to the state Office of Protective Services for forensic analysis. The police have not received the forensic analysis from the state agency.

Applicant discussed the case with the police witness. Applicant stated there was no child pornography in the house. He was shown the images received from the internet service provider and denied any knowledge of them. He admitted accessing and having adult pornography but never child pornography. He said a former girlfriend and a male friend that visited his house occasionally may have used the computer to check their e-mail. He did not recall anyone else using the computer other than himself. At one time he believed his former wife may have accessed the child pornography to set him up. He now believes she was not involved in accessing child pornography on his computer. (Tr. 28-34, 39-42, 55-57, 61-65)

Since the analysis of the computer has not been received, the prosecution requested dismissal of the child pornography charges with leave to secure an indictment if new evidence is received. The case was nolle prossed on March 30, 2011. (Tr. 27-35; Gov. Ex. 8, Order, dated March 30, 2011; App. Ex. A, Letter, dated August 17, 2011) Applicant filed a civil action against the police department and the police witness for violation of his civil rights on November 17, 2011. This action is still

pending. (Tr. 36-39; Gov. Ex. 2, Answer to Interrogatory, dated September 27, 2010; Gov. Ex. 3, Personnel Interview, dated December 21, 2009; Gov. Ex. 5, Arrest Report, dated March 16, 2009; Gov. Ex. 6, Court Calendar, dated March 30, 2009; Grand Jury Indictment, dated June 22, 2010; Gov. Ex. 8, Motion of Nolle Prose, dated March 30, 2011; App. Ex. A, Letter, dated August 17, 2011; App. Ex. I, Complaint, dated November 17, 2011).

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, the 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.

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

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or protect classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

## **Analysis**

### **Alcohol Consumption**

Applicant admitted the five allegations concerning alcohol consumption. Excessive alcohol consumption is a security concern because it 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. (AG ¶ 21)

Applicant's admissions of excess alcohol consumption, and the information in arrest reports concerning alcohol consumption charges are sufficient to raise Alcohol Consumption Disqualifying Condition 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). Applicant admits to excess alcohol consumption from 1997 until 2006. He admits that he had alcohol-related driving and/or opened container violations in 1996, 1997, 2003, and 2006. Applicant believed he had an alcohol problem so he has not consumed alcohol since the 2006 incident.

I considered Alcohol Consumption Mitigating Conditions AG ¶ 23(a) (so much time has passed or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment). I also considered AG ¶ 23(b) (the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of action taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser)). While there is no "bright line" rule for determining when conduct is recent or sufficient time has passed since the incidents, a determination whether past conduct affects an individual's present reliability and trustworthiness must be based on a careful evaluation of the totality of the evidence. If the evidence shows a significant period of time has passed without evidence of an alcohol issue, there must be an evaluation whether that period of time demonstrates changed circumstances or conduct sufficient to indicate a finding of reform or rehabilitation.

The last reported alcohol-related incident for Applicant was in 2006. He has not consumed alcohol since then. He completed a court ordered drug program. He participated in AA programs for some time, and still participates in on-line AA forums. His work performance is excellent. The evidence shows a change of circumstances indicating Applicant has reformed, been rehabilitated, and is no longer an alcohol abuser. It is unlikely his previous alcohol consumption problems will recur. I find that Applicant no longer presents a security concern based solely on alcohol consumption.

### **Guideline E, Personal Conduct**

A security concern is raised because conduct involving questionable judgment, untrustworthiness, unreliability, 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 failure to cooperate with the security clearance process. (AG ¶ 15) Personal conduct is always a security concern because it asks the central question does the person's past conduct justify confidence the person can be entrusted to properly safeguard classified information.

Applicant did not list a felony conviction in response to a question asking if he was ever charged or convicted of a felony offense. In response to a question whether he was ever charged or convicted of an offense relating to alcohol or drugs, he listed the felony conviction for possession of cocaine and a driving while intoxicated offense. He did not list all of his alcohol-related offenses. His incorrect or incomplete answers to the security clearance application question raises Personal Conduct Disqualifying Condition 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).

Applicant denied an intentional falsification for the incorrect or missing material information on his security clearance application. While there is a security concern for an omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance, not every omission, concealment, or inaccurate statement is a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully with intent to deceive. Applicant did not list his felony conviction for possession of cocaine in response to the question on felony convictions but did provide the information in response to another question on the application. Since Applicant listed the felony conviction on the application, it is clear he did not omit the information with the intent to deceive. He provided the information just not in response to the correct question. He did not list all of his alcohol-related offenses because he did not remember them. He listed the offenses he remembered, placing the Government on notice that he had alcohol-related arrests or charges. He did not provide inaccurate or incomplete information with the intent to deceive. I find for Applicant on the personal conduct security concerns relating to the allegation that he failed to provide truthful and candid answers on his security clearance application.

The series of motor vehicle-related offenses from 2001 until 2006 including those raised as a result of alcohol consumption, and the allegation of accessing child pornography and termination for that offense raises Personal Conduct Disqualifying Conditions AG ¶ 16(c) (credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicting that the person may not properly safeguard protected information); AG ¶ 16(d) (credible adverse information

that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: (3) a pattern of dishonesty or rule violations); and AG ¶ 16(e) (personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing.).

The Government produced substantial evidence to establish the disqualifying conditions as required in AG ¶¶ 16(c), 16(d), and 16(e). The burden shifts to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns under personal conduct. An applicant has the burden to refute an established allegation or prove a mitigating condition, and the burden to prove or disprove it never shifts to the Government.

As to the offenses that raise personal conduct security concerns, I considered Personal Conduct Mitigating Conditions AG ¶ 17(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); AG ¶ 17(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); and AG ¶ 17(e) (the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress).

The alcohol-related personal conduct happened from 1997 until 2006. There are no alcohol-related incidents since 2006. Applicant has not consumed alcohol since 2006 and has successfully completed a substance abuse program and still occasionally participates in an aftercare program. The last vehicle-related offense also happened in 2006. Taken in isolation, these offenses could be mitigated and no longer create a security concern. However, there is an allegation that Applicant accessed child pornography in 2009. The internet service provider notified the proper authorities using the proper procedures that child pornography was accessed by a computer at the internet address assigned to Applicant. Applicant denied that he accessed child pornography, but he was the primary user of the internet address. He could not provide sufficient information to establish that someone else accessed child pornography on his computer. The issue has not been resolved as a criminal matter. The information from the internet service concerning the child pornography accessed at the internet address assigned to Applicant, Applicant's access to that internet address, and no feasible possibility of another individual accessing the internet at that address provides sufficient information to establish that Applicant accessed the child pornography material. He did not refute or mitigate the allegation that he accessed child pornography. The

Government provided sufficient information to establish that Applicant has a long history of engaging in a course of conduct that involved questionable judgment, dishonesty, and unwillingness to comply with rules and regulations. This long course of conduct establishes that Applicant is unreliable, untrustworthy, and does not have the ability to protect classified information. I find against Applicant as to personal conduct based on these allegations.

### **Whole-Person Analysis**

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and the relevant circumstances. An 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 a security clearance must be 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 the facts and circumstances surrounding this case. I considered Applicant's six years of honorable service in the Marine Corps. I considered that Applicant is a good employee and his job performance is excellent. Applicant had alcohol-related and vehicle-related problems resulting in criminal action from 1997 until 2006. He accessed and viewed child pornography in 2009. This history of a long course of personal conduct of security concern when considered under the whole-person concept established that Applicant is unable or unwilling to comply with rules and regulations. It shows that he is unreliable and untrustworthy and does not have the ability to protect classified information. The record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated personal conduct security concerns.

### **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:

FOR APPLICANT

|                            |                   |
|----------------------------|-------------------|
| Subparagraphs 1.a - 1.e:   | For Applicant     |
| Paragraph 2, Guideline E:  | AGAINST APPLICANT |
| Subparagraphs 2.a - 2.d:   | Against Applicant |
| Subparagraphs 2.e - 2.f:   | For Applicant     |
| Subparagraphs 2.g and 2.h: | Against Applicant |

### **Conclusion**

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

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THOMAS M. CREAN  
Administrative Judge