DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 10-07310
	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Alison O'Connell, Esquire, Department Counsel
For Applicant: Thomas P. Quinlan, II, Esquire

December 30, 2011

Decision

WHITE, David M., Administrative Judge:

Applicant committed numerous alcohol-related driving offenses between 1983 and 2005. In 2009 he was arrested after an alcohol-fueled disturbance on an airplane for a 2007 bench warrant issued for his failure to complete court-ordered alcohol treatment. In 1989 he fled to another state to avoid trial on a felony charge. He deliberately omitted his 2009 arrest from his security clearance application. The evidence is insufficient to mitigate resulting security concerns. Based upon a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on March 25, 2010. On May 25, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines G (Alcohol Consumption), and 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

Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (AR) on June 25, 2011, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on July 22, 2011, and the case was assigned to me on August 1, 2011. DOHA issued a Notice of Hearing on August 3, 2011, and I convened the hearing as scheduled on September 13, 2011. The Government offered exhibits (GE) 1 through 3, which were admitted without objection. Applicant offered exhibit (AE) A, which was also admitted without objection, and testified on his own behalf. I granted Applicant's request to leave the record open until September 27, 2011, for submission of additional evidence. DOHA received the transcript of the hearing (Tr.) on September 23, 2011. Applicant timely submitted additional evidence, which was marked AE B and AE C, and admitted without objection. The record closed as scheduled.

Findings of Fact

Applicant is a 49-year-old employee of a defense contractor, where he began working in August 2009. He is divorced, with two adult children. He graduated from high school in 1980, and spent the next year earning a diploma from a vocational/technical institute. He has never served in the military, although he has worked as a direct-support contractor for military units since October 2007. He was first granted a security clearance in connection with this work in June 2008.[1] In his response to the SOR, Applicant admitted SOR ¶¶ 1.a through 1.g, 2.a, and 2.b. He denied SOR ¶ 2.c. Applicant's admissions, including his statements in response to DOHA interrogatories,[2] are incorporated in the following findings.

Applicant stated that he started to consume alcohol at age 13 (approximately 1975) while in military school. During the 1980s he consumed approximately 12 beers per day, to the point of intoxication and sometimes to excess until he blacked out. During the 1990s he reduced his consumption to a six pack of beer three or four times a week. He reported moving home to look after his ill mother in 2002, where he consumed 6 to 18 beers a week at home but continued to drink away from home and drive until his most recent arrest for Driving under the Influence (DUI) in July 2005. From 2005 until the date of his interview with an investigator from the Office of Personnel Management (OPM) in May 2010, he reportedly drank a six pack of beer on a weekly basis at home, becoming intoxicated maybe twice a month. He testified during his hearing that he presently drinks alcohol once or twice a month, never to the point of intoxication. He did not remember the last time he was intoxicated, and last drank a couple beers during a going-away party at a pizza restaurant three weeks previously.[3]

---

[1]GE 1; GE 2; Tr. 50-51.

[2]GE 2.

[3]GE 2; Tr. 96-97.

Applicant was arrested in May 1983 and charged with DUI, as well as drug possession charges that were eventually dismissed. He says that he cannot remember very much about the 1980s due to the long-term effects of his past alcohol abuse and party life style, and could have had other DUI offenses that he cannot remember. A friend recently told him that the arrest occurred after they had been partying and Applicant drove because the friend was too drunk to do so.[4]

Applicant said that he was arrested again in November 1987, and charged with felony DUI after he ran into the back of a car that had stopped along the freeway and may have had a passenger inside. He drank after work until he was intoxicated, then attempted to drive home. He is unclear concerning the date or details, but recalls being advised by his attorney that, for this second DUI offense, he would be sent to jail if he remained in State A. He was afraid of being imprisoned, so he moved to State B to avoid trial. He said that the court in State A issued a bench warrant for his arrest. He returned to State A in 1998 to care for his mother. While there, he hired an attorney to resolve his outstanding DUI charge and bench warrant. Around May 1998, he pled guilty to misdemeanor DUI, and was fined and awarded three years of probation.[5]

Court documents from State A provided by Applicant indicate that he was convicted of DUI on August 10, 1983, and again on February 28, 1984. He was arrested and charged with misdemeanor DUI on November 13, 1987. He pled guilty and was convicted of the lesser offense of Reckless Driving with alcohol involved on September 20, 1989. On October 5, 1989, he was arrested again and charged with Felony DUI. It was this latter offense for which the bench warrant was issued on November 7, 1989, that was resolved in June 1998 by a guilty plea to misdemeanor DUI.[6]

In August 1998, Applicant was arrested for another DUI in State A. He pled guilty to the lesser offense of Reckless Driving with alcohol involved on October 20, 1998. He was fined, awarded three years probation, and ordered to attend an alcohol treatment program. In December 1999 he met this requirement by completing an 18-hour chemical dependency program.[7]

Applicant visited his brother in State C during 1999. After getting intoxicated at a party, he drove his truck into a city roadside pole. He then drove the truck a few blocks away and abandoned it. In order to avoid another DUI arrest, he waited until the next morning when he had sobered up to retrieve the truck which had been impounded. He was issued a citation for damaging city property and fined around $200.[8]

---

[4]AR; GE 2; GE 3; Tr. 52-57.

[5]AR; GE 2; Tr. 57-70.

[6]GE 2 at R-14 to R-18.

[7]AR; GE 2; Tr. 70-72, 77-78.

[8]AR; GE 2; Tr. 78-81.

During July 2005, while in State A taking care of his mother, Applicant went fishing on a friend's boat. After drinking about 12 beers over a four or five hour period, he hit a motorcycle that was stopped in traffic from behind. He was arrested and charged with two felony counts of DUI causing bodily injury and driving with a blood alcohol content (BAC) in excess of .08 and causing bodily injury. His BAC registered .17. Contrary to his testimony at the hearing concerning why he failed to disclose this felony arrest, he remained charged with these felonies until August 31, 2005. On that date, the court accepted his guilty plea to the lesser included offense of driving with a BAC in excess of .08, and sentenced him to community service, five years of probation, and a $2,200 fine. He was also ordered to complete an 18-month alcohol treatment program. Shortly thereafter, Applicant moved back to State B, where he obtained an alcohol assessment and enrolled in an acceptable treatment program. However, he did not have any medical insurance and thought the $7,000 cost of the program was more than he wanted to pay. Accordingly, he did not attend the treatment program.[9]

On September 27, 2007, the court in State A revoked Applicant's probation and issued a bench warrant for his arrest for failure to complete his required alcohol treatment program. In June 2009, while working in support of U.S. combat forces overseas, Applicant was notified that his brother had passed away in State A. His company arranged for him to fly there to attend the funeral, and bought him a first class ticket. He drank too much of the free alcohol he was offered, and became loud and disruptive. When the plane landed, it was met by airport police officers who escorted Applicant off the plane. After a criminal background check, the police arrested him on the outstanding bench warrant. He was never charged with any offense in connection with his conduct on the plane. When he appeared in court, the judge sentenced him to 180 days in confinement, suspended on condition that he not drive in State A, and extended his probation until October 24, 2012. The requirement that he undergo alcohol treatment was deleted, since he was going to return to the overseas combat zone following his brother's funeral. He did return overseas, but quit that job and returned to the United States in August 2009 due to ongoing personal problems with a supervisor with whom he had gotten into an off-duty alcohol-fueled fight during March 2009.[10]

Sometime during the 1980s, Applicant voluntarily entered an inpatient alcohol detoxification treatment program. He does not remember the details, but testified that after being there for three days they discharged him and said that he did not have an alcohol problem. During August 2011, he was assessed by a Chemical Dependency Professional in State B, who found, "Insufficient Evidence of Abuse/Dependence with drugs/alcohol at this time." No treatment was recommended. He told the assessor that he had four prior DUI charges, in 1981, 1988, 1989, and 2005 in State A. His State B driving record was clear of any prior or pending charges, and he reported his current use as social drinking twice a month. He made no mention of his 2009 airport arrest.[11]

---

[9]AR; GE 2; Tr. 84-93.

[10]AR; GE 1; GE 2; Tr. 37-40, 90, 93-94,

[11]AE A; GE 2; Tr. 33-35, 73-76, 103.

Applicant testified that he attended four general counseling sessions during a two-month period in early 2011 to learn how to manage and deal with his family-related stress. He felt that this counseling had significantly helped him, and would reduce his tendency to turn to excessive drinking in response to those stressful issues.[12]

Applicant did not include his June 2009 arrest by the airport police on his security clearance application dated March 25, 2010, in response to question 22b. He answered, "Yes," to that question, but only listed DUI arrests in August 2004 and February 1988. He commented that those were DUIs that were currently in his summary of offenses. During the hearing he variously testified that he omitted this arrest because he forgot about it, that he completed the 2010 application using one he had submitted in 2007 that was based on a background check he conducted on himself, that there were no new charges, and that he thought it was directly related to the 2005 DUI. He acknowledged that he should have listed it, but denied intentionally omitting it in order to deceive the Government.[13]

Applicant is a highly regarded technician who, according to him, is one of a few specialists capable of supporting maintenance and training operators of an important and relatively new type of military equipment. Two supervisors praised his technical expertise and dedication to professional performance of his responsibilities in this respect. He credibly testified that he highly values the contributions to the national defense that he proudly provides in this work.[14]

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 (DCs) and mitigating conditions (MCs), which are to be used 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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.

---

[12]Tr. 82-83, 98-99, 104-108.

[13]Tr. 44-46, 95-96.

[14]AE B; AE C; Tr. 26-33, 46-50.

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 the 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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 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

AG ¶ 21 expresses the security concern pertaining to alcohol consumption:

> 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.

AG ¶ 22 describes conditions that could raise a security concern and may be disqualifying. The DC supported by the SOR allegations and asserted by Department Counsel is:

> (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.[15]

Applicant was arrested and prosecuted for four DUI offenses between 1983 and 1989, two of which he could remember and were alleged in the SOR. The last of these resulted in felony charges. He was arrested for another DUI in 1998, two months after being sentenced for his prior offense. During 1999, while in another state, he drove into a pole while intoxicated, and avoided prosecution by abandoning his truck until the next day. In July 2005, he again drove with a BAC more than twice the legal limit and hit a stopped motorcycle. This incident resulted in two felony charges. He failed to complete a court-ordered alcohol treatment program, resulting in issuance of a bench warrant in 2007. During June 2009, he became intoxicated and disruptive on an airplane to the point that airport police were called to escort him off the plane. He was subsequently arrested on the outstanding warrant. These incidents establish a long, troubled pattern that supports substantial security concerns under AG ¶¶ 21 and 22(a). Accordingly, the burden is shifted to Applicant to mitigate those security concerns.

AG ¶ 23 provides conditions that could mitigate alcohol consumption security concerns:

> (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

[15]Tr. 115-121. I considered that the evidence would also support security concerns under AG ¶ 22(c), "habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent"; and under AG ¶ 22(g), "failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence." The security concerns under these DCs overlap with, and essentially duplicate those addressed below under AG ¶ 22(a).

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

Applicant was involved in at least seven alcohol-related driving offenses, and another alcohol-related incident leading to his arrest, over a 26-year period. The most recent incident was about two years ago. None of these alcohol-related incidents were shown to have occurred under unusual circumstances. His choice to continue alcohol consumption, after all of these drinking-related problems, precludes a finding that such incidents are unlikely to recur. Accordingly, AG ¶ 23(a) does not provide mitigation.

Applicant asserted that he had not consumed alcohol to the point of intoxication for several months, but insufficient time has passed to establish mitigation under AG ¶ 23(b), given the duration and nature of his history of alcohol abuse. Similarly, there is insufficient evidence to support mitigation under AG ¶¶ 23(c) or (d). Applicant resumed drinking after each of his alcohol-related incidents, and chose not to participate in court-ordered alcohol counseling and treatment after his 2005 DUI conviction. His only documented completion of alcohol treatment was in December 1999, after which he resumed drinking on a regular basis. He provided no current favorable prognosis by a duly qualified medical professional or social worker, including the counselor he saw for four sessions in early 2011. His August 2011 assessment of "Insufficient Evidence of Abuse/Dependence" was based on his self-report of only about half of his history of alcohol-related incidents.

Guideline E, 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 conditions that could raise a security concern and may be disqualifying. The potentially disqualifying conditions alleged in this case are:

> (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
>
> (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 indicating that the person may not properly safeguard protected information.

Applicant admitted the allegation in SOR ¶ 2.a which, although the dates should read "October 1989" and "1998", vice "November 1987" and "1997", describe his flight to another state to avoid answering felony DUI charges that he expected would result in his imprisonment. He was also arrested in June 2009 on a 2007 bench warrant issued for his failure to comply with court-ordered alcohol treatment. Further whole-person analysis follows below, but these actions demonstrate questionable judgment, untrustworthiness, and unwillingness to comply with rules and regulations under AG ¶ 16(c).

He denied that his omission of his 2009 arrest in his response to question 22b on his March 25, 2010 security clearance application was deliberate. His claim that his answer was based on his prior record check is not credible, since neither of the dates listed for the two reported DUIs coincide with any of his actual offenses. His omission of his other alcohol-related offenses and inconsistent explanations for not listing this arrest cause his denial of intentional omission to lose credibility. On that basis I conclude that he deliberately answered that question falsely. Security concerns under AG ¶ 16(a) were raised by these facts.

Applicant offered insufficient evidence to support any mitigating condition under Guideline E. After careful review of the record, I find that none of them apply.

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):

> (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 considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant's numerous alcohol-related incidents, including several collisions while driving drunk, spanned many years. He was most fortunate that neither he nor anyone else suffered serious injury, or worse, but the conduct was highly reckless and flaunted known legal requirements. Although it did not result in separate criminal charges, his excessive drinking led to his arrest as recently as June 2009.

Applicant is a mature individual who is accountable for his choices and actions. He does not acknowledge an alcohol problem, and was not forthcoming about the full extent of his alcohol-related arrests on his security clearance application or during his most recent assessment. He continues to drink, and failed to demonstrate rehabilitation or other behavioral changes that might make recurrence of such incidents less likely. His susceptibility to pressure or duress in the face of potentially unpleasant consequences is demonstrated by his 1989 flight to avoid trial and his failure to comply with court-ordered alcohol treatment.

Applicant's recent good work performance and pride in providing important direct-support technical services to deployed service members is very commendable. However, it is insufficient to outweigh the concerns raised by his pattern of excessive alcohol consumption and failure to comply with applicable laws, rules, and regulations.

Overall, the record evidence creates substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from alcohol consumption and personal conduct considerations.

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:	AGAINST APPLICANT
Subparagraphs 1.a through 1.g:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a through 2.c:	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.

DAVID M. WHITE
Administrative Judge