DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 10-08729
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Marc G. Laverdiere, Esquire, Department Counsel
For Applicant: *Pro se*

August 24, 2011

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings and exhibits in this case, I conclude that Applicant failed to rebut or mitigate the Government's security concerns under Guideline G, Alcohol Consumption, and Guideline E, Personal Conduct. Applicant's eligibility for a security clearance is denied.

Statement of Case

Applicant completed and certified two Electronic Questionnaires for Investigations Processing (e-QIP), one on November 30, 2007 and the other on February 8, 2010. On March 4, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline G, Alcohol Involvement, and Guideline E, Personal Conduct. On April 20, 2011, DOHA amended the SOR to include four additional allegations under the personal conduct guideline and issued Applicant the amended SOR. 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 within the Department of Defense for SORs issued after September 1, 2006.

On April 4, 2011, Applicant answered the initial SOR in writing and requested that his case be determined on the record in lieu of a hearing. Applicant responded timely to the amended SOR and provided additional information.[1] On May 13, 2011, the Government compiled its File of Relevant Material (FORM). The FORM contained documents identified as Items 1 through 13. By letter dated May 19, 2011, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the FORM on May 28, 2011. His response was due on June 27, 2011. On July 29, 2011, the case was assigned to me for a decision.

Applicant filed a twelve-page response to the FORM within the required time period. Department Counsel did not object to the admission of Applicant's additional information. Accordingly, I marked Applicant's response as Item A and entered it in the record.

Findings of Fact

The SOR contains eight allegations of disqualifying conduct under Guideline G, Alcohol Consumption (SOR ¶¶ 1.a. through 1.h.), and four allegations of disqualifying conduct under Guideline E, Personal Conduct (SOR ¶¶ 2.a. through 2.d.). The amended SOR contains four additional allegations of disqualifying conduct under Guideline E (SOR ¶¶ 2.e. through 2.h.) In his Answer to the SOR, Applicant admitted the eight Guideline G allegations and two of the Guideline E allegations (SOR ¶¶ 2.c. and 2.d.). He denied the Guideline E allegations at SOR ¶¶ 2.a. and 2.b. Applicant admitted the four Guideline E allegations in the amended SOR. Applicant's admissions are entered as findings of fact. (Item 1; Item 4; Item 10; Item 13.)

The facts in this case are established by the record provided in the FORM by the Government and by written information provided by Applicant in response to the FORM. The record evidence includes Applicant's answers to the SOR and the amended SOR; his November 2007 and February 2010 e-QIPs; official investigation and agency records; and Applicant's responses to DOHA interrogatories.[2] (*See* Items 1 through 13; Item A.)

Applicant is 56 years old and employed by a government contractor. He has been married and divorced twice. He was married for the first time in 1981. He and his first wife divorced in 1984. No children were born of his first marriage. Applicant married for the second time in 1988. He and his second wife divorced in 1994. The two children

[1] Applicant's response to the amended SOR was incorrectly dated April 4, 2011.

[2] Applicant was interviewed by authorized investigators from the U.S. Office of Personnel Management (OPM) on February 4, 2008 and April 6, 2010. In response to DOHA interrogatories, Applicant reviewed the investigators' reports and made no additions or deletions. On December 14, 2010, Applicant signed a statement that the investigators' reports accurately reflected his two interviews. (Item 7.)

born of his second marriage are now young adults. He currently lives alone and has no other dependents. (Item 5; Item 6; Item 7; Item 13.)

From 1973 to 1976, Applicant served in the United States military. He was first awarded a security clearance in 1975. In 2000, he earned a bachelor's degree in computer engineering. His background was investigated by another federal department in 2008. Applicant seeks a security clearance for his current work as a senior systems analyst. (Item 5; Item 6; Item 7.)

Applicant has a history of problems with alcohol use. He began to consume alcohol in 1967, when he was 13 years old. From that time until 2005, when he was 51 years old, Applicant's alcohol use consisted of binge drinking. Applicant's history of binge drinking is alleged at SOR ¶ 1.h. (Item 5; Item 6; Item 7 at 12.)

In his 2008 interview with an OPM investigator, Applicant described his drinking pattern as ten days of abstinence, culminating in binge drinking. He stated that his alcohol use affected his personal life but did not affect his professional life or financial stability. (Item 7 at 9.)

The SOR alleged at ¶ 1.a. that in February 1979, Applicant was arrested and charged with Driving Under the Influence (DUI). Applicant admitted the allegation. (Item 1; Item 4; Item 7 at 7; Item 9.)

The SOR alleged at ¶ 1.b. that Applicant was arrested, charged, and received probation for DUI in 1988. The SOR alleged at ¶ 1.c. that in November 1992, Applicant was arrested and charged with DUI, and in January 1995 he was convicted of the charge. Applicant admitted both allegations. (Item 1; Item 4; Item 7 at 7; Item 8.)

The SOR alleged at ¶ 1.d. that in May 1996, Applicant was arrested and charged with Aggravated Driving While Under the Influence of Alcohol and Careless Driving. Applicant admitted the allegation. (Item 1; Item 4; Item 7 at 8.)

The SOR alleged at ¶ 1.e. that in September 1996, Applicant was arrested for Drunkenness and Disorderly Conduct, and a Failure to Appear warrant was issued in connection with that arrest in September 1997. Applicant admitted the arrest, and in his answer to the SOR, he claimed that he had paid the required fine and had been informed by an authorized official of the jurisdiction where the warrant had been issued that his case had been closed. However, he failed to provide documentation to support his claim. (Item 1; Item 4.)

The SOR alleged at ¶ 1.f. that Applicant was arrested in October 1998 and charged with DUI. The SOR further alleged that Applicant was convicted, lost his driver's license, was sentenced to confinement for 0-5 years, and was released on parole. Applicant admitted the allegation. (Item 1; Item 4; Item 7 at 9.)

The SOR alleged at ¶ 1.g. that Applicant was arrested in May 2005 and charged with Driving While Impaired. The SOR further alleged that Applicant received a fine, probation, and loss of his driver's license for one year. Applicant admitted the allegation. (Item 1; Item 4; Item 7 at 9-10.)

Applicant's May 2005 arrest occurred when his employer sent him to a distant state for training. On the night before the training began, Applicant went to bars and drank at least ten alcoholic drinks. He was arrested for Driving While Impaired, and, consequently, he did not appear at the training. His employer learned of his arrest and failure to appear for the training and terminated his employment contract. (Item 7 at 2, 6, 11.)

In his answer to the SOR, Applicant stated that his several DUI convictions were "due to bad judgment and [his] Alcoholism." He further stated that he had been sober for six years, attended meetings of Alcoholics Anonymous (AA) four or five times a week, had completed the AA 12 steps, had an AA sponsor, and acted as a sponsor for others when asked. (Item 4 at 4.)

On December 2010, in response to DOHA interrogatories, Applicant reported that he had received private counseling for his use of alcohol in 2006. He also reported that he had attended 72 sessions of alcohol-related counseling in 1999 and had participated in a 30-day residential alcohol treatment program in 1988. In his 2008 OPM interview, Applicant reported that he had been professionally diagnosed with alcohol abuse in 1999 and 1988. In his 2010 OPM interview, Applicant stated that he had not actually been diagnosed or evaluated by a qualified medical professional or licensed clinical professional as suffering from alcohol abuse or alcohol dependency. He provided no explanation for these apparently contradictory statements. (Item 7 at 3, 8-9, 13.)

Applicant completed two e-QIPs, one on November 30, 2007, and the other on February 8, 2010. Section 23d on the e-QIP that Applicant completed in November 2007 refers to an individual's police record and asks: "Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?" Applicant answered "Yes" to Section 23d. The instructions for completing a "Yes" answer to Section 23 state: "If you answered 'Yes' to a, b, c, d, e, or f [in Section 23], provide an entry for each occurrence to report." In response, Applicant listed a DUI offense in May 2004[3] and a DUI offense in 1998. He did not report that he has been arrested for and convicted of at least three other DUI offenses. SOR ¶ 2.b. alleged that Applicant's failure to list all of his DUIs in response to Section 23d constituted a deliberate falsification of his e-QIP. Applicant denied the allegation of deliberate falsification and stated that he thought he was only responsible for reporting DUI arrests for the previous ten years. In support of his understanding, Applicant quoted from the e-QIP instructions pertaining to residence, employment, and education. (Item 1; Item 4; Item 5.)

[3] In his interview with an authorized investigator from OPM, Applicant stated that, through oversight, he had listed his 2005 DUI as occurring in 2004. (Item 7 at 14-15.)

Less than three years later, Applicant completed a second e-QIP. Section 22e on the e-QIP Applicant completed in February 2010 also refers to an individual's police record and reads: "Have you EVER been charged with any offense(s) related to alcohol or drugs?" [Emphasis in original.] Applicant answered "Yes" to Section 22e. The instructions for completing a "Yes" answer to Section 22e state: "If you answered "Yes" to [questions in Section 22], explain below, providing information for each and every offense." In response, Applicant again misidentified his 2005 DUI as occurring in 2004, and he again listed his DUI offense in 1998. SOR ¶ 2.a. alleged that Applicant's failure to list all of his DUIs in response to Section 22e constituted a deliberate falsification of his e-QIP. Applicant again denied the allegation of deliberate falsification and stated that he thought he was responsible for reporting DUI arrests for the previous ten years. In support of his understanding, Applicant quoted from the e-QIP instructions for completing questions related to residence, employment, and education. (Item 1; Item 4; Item 6.)

Section 25c of the e-QIP Applicant completed in November 2007 asks: "In the last 7 years, has your use of alcoholic beverages (such as liquor, beer, wine) resulted in any alcohol-related treatment or counselling (such as for alcohol abuse of alcoholism)?" Applicant responded "No" to Section 25c. He did not list his 2006 alcohol treatment. In SOR ¶ 2.d., DOHA alleged that Applicant's failure to list his 2006 alcohol counselling constituted intentional falsification of material facts. Applicant admitted that the information he provided was false but not intentionally so. (Item 1; Item 4; Item 5.)

Section 24c of the e-QIP Applicant completed in February 2010 asks: "In the last 7 years, have you received counselling or treatment as a result of your use of alcohol?" Applicant responded "No" to Section 24c. He did not list his 2006 alcohol treatment. In SOR ¶ 2.c., DOHA alleged that Applicant's failure to list his 2006 alcohol counselling constituted intentional falsification of material facts. Applicant admitted that the information he provided was false, but he stated that his omission was not intentional. (Item 1; Item 4; Item 6.)

Section 22 of the e-QIP Applicant completed in November 2007 asks:

Has any of the following happened to you in the last 7 years:

1. Fired from a job?
2. Quit a job after being told you'd be fired?
3. Left a job by mutual agreement following allegations of misconduct?
4. Left a job by mutual agreement following allegations of unsatisfactory performance?
5. Left a job for other reasons under unfavourable circumstances?

Applicant responded "No" to Section 22. He did not report that his contract was terminated by his employer after his May 2005 DUI. In ¶ 2.e. of the amended SOR, DOHA alleged that Applicant falsified a material fact on his 2007 e-QIP when he answered "No" to Section 22. Applicant admitted the allegation. He further stated that

he left his employment in 2005 under unfavourable circumstances, but he was later rehired by a successor company. He stated that he believed his "No" answer to Section 22 was correct. However, in response to DOHA interrogatories in December 2010, Applicant conceded that, upon review of his e-QIPS, he could have reported that he left his employment in 2005 after allegations of misconduct. (Item 5; Item 7 at 6; Item 10; Item 13.)

Section 13c on the e-QIP Applicant completed in February 2010 is identical to Section 22 on the e-QIP he completed in November 2007, with one exception. In additional to asking the five questions asked on Section 22, Section 13c also asks if an employee was laid off by an employer. Applicant responded "No" to Section 13c and did not report that his employment contract had been terminated by his employer after his May 2005 DUI. In ¶ 2.f. of the amended SOR, DOHA alleged that Applicant falsified material facts on his 2010 e-QIP when he answered "No" to Question 13c. Applicant admitted the allegation. He again stated that he believed his "No" answer to Section 13c was correct. However, in response to DOHA interrogatories in December 2010, Applicant conceded that, upon review of his e-QIPS, he could have reported that he left his employment in 2005 after allegations of misconduct. (Item 5; Item 7 at 6; Item 10; Item 13.)

The amended SOR alleges at ¶¶ 2.g. and 2.h. that Applicant falsified material facts on his 2007 and 2010 e-QIPs when he identified only his second marriage and spouse and failed to identify his first marriage and spouse. Applicant admitted both allegations. He stated that he had had no contact with his first wife for over 25 years and had none of the information that was requested about her on the two e-QIPs. (Item 10; Item 13.)

In response to the FORM, Applicant provided three letters of character reference and his most recent employment evaluation. In a letter dated December 22, 2010, the coordinator of a substance abuse recovery network expressed his appreciation to Applicant for his work in updating the organization's website. The coordinator noted that Applicant donated a great deal of his time to helping recovering substance abusers find information on available services and support. In a second letter of character reference, dated June 13, 2011, the executive director of a non-profit substance abuse program expressed appreciation for Applicant's service on its board of directors. In a third letter, Applicant's friend of 20 years stated that she had witnessed his current six years of sobriety. She also stated:

> I am quite familiar with how [Applicant] maintains his sobriety and stays committed to his recovery: a regular AA meeting schedule, a home AA group, a sponsor, a core support group of men in recovery, volunteer work at a local recovery center and at a local residential treatment facility, plus helping newcomers through sponsorship and generally being available to help others achieve recovery.

(Item A.)

Applicant provided a copy of his employment assessment for the period from April 1, 2010, to March 31, 2011. Applicant's manager concluded that Applicant fully met 11 operational and personal competencies and exceeded expectations in two: job knowledge and results focus. The manager noted that Applicant "is an excellent technician" and an asset to the company. (Item A.)

Applicant did not provide a prognosis regarding his current alcohol status and his prospects for rehabilitation by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Policies

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

When evaluating an applicant's suitability for a security clearance, an 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 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, the administrative judge applies these guidelines 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 as to 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 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.

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." *See also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline G, Alcohol Consumption

Guideline G, Alcohol Consumption, applies in this case to a determination of eligibility for access to classified information. Under Guideline G, "[e]xcessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability."

I have considered all of the Alcohol Consumption Disqualifying Conditions. I conclude that Guideline G disqualifying conditions at ¶¶ 22(a) and 22(c) apply in Applicant's case. AG ¶ 22(a) reads: "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." AG ¶ 22(c) reads: "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."

Applicant began to binge drink when he was 13 years old, and his binge drinking continued for 38 years. He was arrested and charged with DUI or Driving While Impaired in 1979, 1988, 1992, 1998, and 2005. Additionally, he was arrested and charged twice in 1996, once with Aggravated Driving While Under the Influence of Alcohol and once with Drunkenness and Disorderly Conduct. Applicant completed alcohol treatment or counseling in 1988, 1999, and 2006. Applicant states that he has remained sober since 2005. These facts raise security concerns under AG ¶¶ 22(a), and 22(c).

The Guideline G disqualifying conduct could be mitigated under AG ¶ 23(a) if "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." The disqualifying conduct could also be mitigated under AG ¶ 23(b) if "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)." If "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," then AG ¶ 23(c) might apply. Finally, mitigation might be possible under AG ¶ 23 (d) if "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, who is now 56 years old, admits binge consumption of alcohol from 1967 to May 2005, a period of 38 years. During that time, he was arrested and charged with DUI in 1979, 1988, 1992, 1998, and 2005. He was also arrested and charged with Aggravated Driving While Under the Influence in May 1996 and Drunkenness and Disorderly Conduct in September 1996. Applicant participated in rehabilitative alcohol treatment and counseling three times. These treatments, in 1988, 1999, and 2006, were several years apart. The treatments in 1988 and 1999 establish that even after several years of apparent sobriety, Applicant relapsed and again was arrested for DUI and other alcohol-related offenses. While, to his credit Applicant is actively participating in AA, his long history of binge drinking despite treatment and counseling for alcohol rehabilitation suggests that his binge drinking may recur. Without a prognosis and assessment of Applicant's current rehabilitation status from a qualified medical professional and an opportunity to question Applicant at a hearing and assess his credibility, I conclude that AG ¶ 23(a) does not apply to the facts of this case. Additionally, I conclude that AG ¶ 23(c) has only limited applicability in this case.

Applicant acknowledged his alcoholism but provided conflicting information about whether he had been diagnosed as an alcohol abuser. He stated that he had abstained from alcohol use since May 2005 and attended AA meetings several times a week, had an AA sponsor, and was active as a volunteer in a community that provided rehabilitative resources to substance abusers. Additionally, he provided letters of character reference from individuals in his community who knew of and appreciated his efforts in the rehabilitation of individuals addicted to alcohol.

Applicant completed three alcohol rehabilitation programs. However, he failed to provide an assessment of his progress and a prognosis for rehabilitation from a duly qualified medical professional or licensed clinical social worker who is a staff member of

a recognized alcohol treatment program. Accordingly, I conclude that AG ¶¶ 23(b) and 23(d) apply only in part to the facts of Applicant's case.

Guideline E, Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern:

> 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.

When Applicant completed and certified his e-QIPs in November 2007 and February 2010, he answered "Yes" when asked if he had ever been charged with any offenses related to alcohol or drugs. However, on both e-QIPS, he failed to report, as requested, all such offenses and only listed two of the five DUIs he had been charged with between 1979 and 2005. DOHA alleged that Applicant's omissions were deliberate falsifications of material facts. Applicant denied the allegations and asserted that he believed he was required to report only those DUIs he had received in the previous ten years.

On his 2007 and 2010 e-QIPS, Applicant was asked if he had received counseling and treatment for his use of alcohol in the last seven years. Applicant answered "No" on both e-QIPS, when, in truth, he had received alcohol treatment in 2006. DOHA alleged that Applicant's denials were deliberate falsifications of relevant facts.

When he completed his 2007 and 2010 e-QIPs, Applicant was asked if, in the last seven years, he had been fired from a job, quit a job after being told he would be fired, left a job by mutual agreement following allegations of misconduct, left a job by mutual agreement following allegations of unsatisfactory performance, or left a job for other reasons under unfavorable circumstances.[4] On both e-QIP forms, Applicant answered "No", even though he knew his employer had terminated his contract after Applicant was arrested for DUI while assigned to another location for training. DOHA alleged that Applicant's "No" answers were falsifications of material facts.

DOHA also alleged that Applicant falsified material facts on his 2007 and 2010 e-QIPs when he identified only his second marriage and second spouse and failed to report an earlier first marriage and list the name of the first spouse.

[4] Applicant's 2010 e-QIP also asked if he had been laid off by an employer in the last seven years. (Item 6.)

The Guideline E allegation in the SOR raises a security concern under AG ¶ 16(a). AG ¶ 16(a) reads: "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 SOR ¶¶ 2.a. and 2.b., which alleged deliberate falsification and failure to report three of the five DUIs he was charged with between 1979 and 2005. DOHA's Appeal Board has cogently explained the process for analyzing falsification cases:

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

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

Several Guideline mitigating conditions might apply to the facts of this case. Applicant's disqualifying personal conduct might be mitigated under AG ¶ 17(a) if "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." If "the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security process" and "[u]pon being made aware of the requirement to cooperate or provide information, the individual cooperated fully and completely," then AG ¶ 17(b) might apply. If "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 case doubt on the individual's reliability, trustworthiness, or good judgment," then AG ¶ 17(c) might apply.

Applicant is a mature adult who has, in the course of his employment in the military and as a government contractor, completed several security clearance applications. When he completed his e-QIP in 2007, he listed his 1998 and 2005 DUIs and failed to report three earlier DUIs, even though the question specifically requested that he list all DUIs that he had ever received. Three years later, when asked the same question on his 2010 e-QIP, he again listed the 1998 and 2005 DUIs and failed to report the three earlier DUIs. Applicant said that he thought he should report only those

offenses within the last ten years, and he provided instructions from the e-QIP that he argued justified his actions. However, the instructions applied to another section of the e-QIP and not to the section having to do with a person's police record. Applicant's attempt to justify his omission of three of his five DUIs was not persuasive. He knew that a large number of DUIs on his e-QIPs might be considered a security concern, and he therefore had good reason to minimize the number of his DUIs. I thoroughly reviewed the documentary evidence in this case. I conclude that AG ¶¶ 17(a), 17(b), and 17(c) do not apply in mitigation, and Applicant's failures to list all of his DUIs on his 2007 and 2010 e-QIPS were willful and deliberate falsifications.

Applicant falsified his 2007 and 2010 e-QIPs when he denied receiving alcohol treatment and counseling in the past seven years when, in fact, he had received alcohol counseling and treatment in 2006. He also falsified his 2007 and 2010 e-QIPs when he failed to report that his employer had terminated his employment contract in 2005 after he was arrested for DUI when on a training assignment for his employer. As with his concealment of the number of his DUIs, Applicant's denial on his e-QIPS that he had received alcohol treatment in the past seven years and had had his employment contract terminated as a result of a DUI in 2005 are events that Applicant, experienced in the security application process, would be motivated to conceal. After reviewing the record as a whole, I conclude that AG ¶¶ 17(a), 17(b), and 17(c) do not apply in mitigation and these falsifications were also willful and deliberate.

The amended SOR alleged at ¶¶ 2.g. and 2.h. that Applicant falsified his 2007 and 2010 e-QIPs when he failed to report an earlier first marriage and provide information about his first spouse. Applicant admitted that the information he provided was false and stated that he and his first wife had divorced in 1984, he had not seen her for over 25 years, and he had no information about her. I conclude that AG ¶ 17(c) applies in part in mitigation to these two allegations.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an 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 the facts and circumstances surrounding this case. Applicant is a mature adult whose military and civilian contractor experience has provided him with knowledge of the security clearance process and its policies. In completing his e-QIPS in 2007 and 2010, he was aware that his long history of binge drinking, which resulted in numerous DUIs and alcohol-related arrests, might be of security concern. When he was interviewed by an OPM investigator in 2008, he stated that he had twice been professionally diagnosed as suffering from alcohol abuse and had twice undergone alcohol treatment and counseling. However, when he was interviewed by an OPM investigator in 2010, he stated that he had not actually been diagnosed by a qualified medical professional or licensed clinical professional as suffering from alcohol abuse or alcohol dependency. He did not provide documentation to establish the professional qualifications of those who diagnosed his condition as alcohol abuse, and such documentation was not otherwise found in the record.

Applicant asserted that he was taking part in AA and other activities intended to support his sobriety, which he stated began in 2005 after his last DUI arrest and continued to the present. He also provided character reference statements from friends and other individuals that attested to his efforts to remain sober. His yearly performance evaluation was favorable.

At the same time, however, Applicant, who admitted to binge drinking for over 38 years, failed to provide 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 center. Applicant failed to meet his burden of persuasion that his alcohol problems no longer impacted his judgment, reliability, and trustworthiness.

Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from his alcohol consumption and personal conduct.

Formal Findings

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

Paragraph 1, Guideline G:	AGAINST APPLICANT
Subparagraphs 1.a. - 1.h.:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT

Subparagraphs 2.a. - 2. f.: Against Applicant

Subparagraphs 2.g. - 2.h.: For 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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Joan Caton Anthony
Administrative Judge