DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
--------	)	ISCR Case No. 11-04879
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

05/24/2013

Decision

GALES, Robert Robinson, Chief Administrative Judge:

Applicant mitigated the security concerns regarding criminal conduct, but failed to mitigate the security concerns regarding alcohol consumption and personal conduct. Eligibility for a security clearance and access to classified information is denied.

Statement of the Case

On September 8, 2010, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.[1] On an unspecified date, the Department of Defense (DOD) issued him a set of interrogatories. He responded to the interrogatories on March 20, 2012.[2] On an unspecified date, the DOD issued him another set of interrogatories. It is unclear when he responded to the interrogatories because they are unsigned and undated.[3] On September 20, 2012, the DOD issued a Statement of Reasons (SOR) to him, under Executive Order 10865, *Safeguarding Classified Information within Industry*

[1] GE 1 (SF 86, dated September 8, 2010).

[2] GE 2 (Applicant's Answers to Interrogatories, dated March 20, 2012).

[3] GE 3 (Applicant's Answers to Interrogatories, undated).

(February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guidelines J (Criminal Conduct), G (Alcohol Consumption), and E (Personal Conduct), and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on October 5, 2012. In a sworn statement, dated October 17, 2012, Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing. On November 2, 2012, citing the Directive, Enclosure 3, Additional Procedural Guidance, ¶ E3.1.7., Department Counsel requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on November 14, 2012. The case was assigned to me on March 21, 2013, A Notice of Hearing was issued on March 28, 2013, and I convened the hearing, as scheduled, by video teleconference, on April 8, 2013.

During the hearing, six Government exhibits (GE 1 through GE 6) were admitted into evidence without objection. Applicant testified, but offered no exhibits. The transcript of the hearing (Tr.) was received on April 12, 2013. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity, and he submitted 24 documents which were admitted into evidence as Applicant exhibits (AE A through AE X) without objection. The record closed on April 19, 2013.

Findings of Fact

In his Answer to the SOR, Applicant admitted all of the factual allegations in the SOR pertaining to criminal conduct (¶¶ 1.a. through 1.e.) and alcohol consumption (¶¶ 2.a. through 2.c.). He denied the factual allegations pertaining to personal conduct. Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 34-year-old employee of a defense contractor, and he is seeking to retain the secret security clearance which was granted to him in 2000.[4] He has been gainfully employed by the same defense contractor since March 2005, and currently serves as a communications engineer.[5] He was previously employed as an infrastructure installment technician. He served on active duty in an enlisted capacity

[4] GE 1, *supra* note 1, at 40-41.

[5] GE 1, *supra* note 1, at 18.

with the U.S. Air Force from May 2000 until he was honorably discharged in May 2004.[6] He was awarded the following awards and decorations: Air Force Training Ribbon, National Defense Service Medal, Air Force Outstanding Unit Award (with V for valor), Air Force Longevity Service Award, Air Force Good Conduct Medal, Air Force Overseas Long Tour Ribbon, Small Arms Expert Marksmanship Ribbon (Rifle), Basic Training Honor Graduate Ribbon, and Air Force Achievement Medal.[7]

While on active duty, he was deployed on three occasions in support of Operation Enduring Freedom (Afghanistan), Operation Shining Express (Liberia), and Operation Iraqi Freedom (Iraq).[8] As a civilian employee, he has been involved in establishing and maintaining disaster communications during Hurricane Katrina, the earthquake in Haiti, the Asian tsunami, and the nuclear reactor disaster in Japan.[9]

A 1996 high school graduate, Applicant attended a community college on a part-time basis until 1999. In 2004, he received an associate of science degree from the community college of the Air Force.[10] Applicant was married in July 2010.[11] He has one daughter, born in 2011.[12]

Criminal Conduct & Alcohol Consumption

Applicant is an alcohol abuser who, on occasion, consumed alcohol to the point of intoxication and passing out.[13] He was a frequent consumer of alcohol from shortly after he graduated from high school, initially drinking two or three beers at a time with friends, once a month, over a period of about two years. Commencing in 1998, his consumption decreased to one or two beers at a time, about three or four times per year. When he joined the Air Force, his consumption increased to three or four beers at a time each week, when not deployed. After leaving active duty, his consumption decreased to one or two beers at a time, three or four times per year. In late 2005, Applicant's consumption of beer at home virtually ceased, but he started occasionally going to a bar for two or three beers. From 2006 until December 2010, his consumption consisted of one to two beers once a month and three to four beers every other month,

[6] AE A (Certificate of Release or Discharge from Active Duty (DD Form 214), dated May 17, 2004).

[7] AE A, *supra* note 6.

[8] AE B (NATO Travel Order, dated October 18, 2001); AE C (Special Mission Travel Order, dated February 13, 2003); AE D (Special Mission Travel Order, dated March 14, 2003); NATO Travel Order, dated February 13, 2003); AE G (Enlisted Performance Report, dated February 7, 2002); AE I (Enlisted Performance Report, dated September 28, 2003); AE F (Description of Task Force Viking, undated).

[9] Tr. at 54-57.

[10] GE 3 (Personal Subject Interview, dated November 30, 2010) (PSI 2010), at 2; Tr. at 50.

[11] GE 1, *supra* note 1, at 27.

[12] Tr. at 38.

[13] Applicant's Answer to the SOR, at 3.

and at least as recently as February 2011, two to four beers every four to six weeks at a bar.[14]

Applicant's consumption of alcohol resulted in at least six incidents involving either military or law enforcement authorities. During the *Lundi Gras* festivities in 2000, Applicant consumed an unspecified amount of alcohol. He was arrested and charged with lewd and lascivious behavior, and taken to a temporary holding cell. He spent the night in jail, went to court, entered a plea of no contest, paid a $350 fine, and was released (SOR ¶¶ 1.e. and 2.c.).[15] Applicant acknowledged consuming alcohol, but denied he was intoxicated.[16] He initially denied knowing why he was arrested, and attributed the action to mistaken identity.[17] He subsequently acknowledged he was arrested after he was unable to find a restroom and had urinated against the side of a building.[18]

During the winter or fall of 2001, while at a barracks party, Applicant consumed maybe two or three beers. A scuffle started between other individuals, and at some point, someone bumped into Applicant and knocked him down a flight of stairs, causing a shoulder injury and a cut forehead. When he arrived at the medical facility, blood was drawn from him and it registered an unspecified level of alcohol in his system.[19] Applicant initially denied being intoxicated,[20] and eventually stated that he "wasn't heavily intoxicated."[21] Because the incident involved alcohol, Applicant was directed to attend a one-day Alcohol Safety Action Program (ASAP) class (SOR ¶ 2.b.).[22]

In January 2006, Applicant attended a party at a friend's house that was eventually moved over to a bar where the party continued. Applicant admittedly had too much to drink and was intoxicated. Things got out of hand when Applicant started arguing with the staff at the bar, and Applicant was thrown out of the bar by the bouncers. He tried to locate his friends and started knocking on the back door of the bar. The bar staff called the police and, when he started arguing with the police, he was taken into custody and charged with disorderly while intoxicated. He spent the night in

[14] GE 3 (PSI 2010), *supra* note 10, at 3, 5; GE 3 (Personal Subject Interview, dated February 4, 2011) (PSI 2011), at 3.

[15] GE 3 (PSI 2011), supra note 14, at 2; GE 4 (Report of Investigation, dated August 1, 2002.

[16] GE 3 (PSI 2011), *supra* note 14, at 2.

[17] GE 4 (Statement, dated August 1, 2002).

[18] GE 3 (PSI 2011), *supra* note 14, at 2.

[19] GE 3 (PSI 2011), *supra* note 14, at 2; Tr. at 105.

[20] GE 3 (PSI 2011), *supra* note 14, at 2.

[21] Tr. at 104.

[22] GE 3 (PSI 2011), *supra* note 14, at 2; Tr. at 105-106.

jail, eventually pleaded guilty, and paid a fine of maybe $300 or $400 (SOR ¶¶ 1.d. and 2.c.).[23]

In May 2006, while working in another state, Applicant accompanied some coworkers to a bar where he consumed three or four beers. He was driving from the bar to his nearby hotel when he was stopped by the police for speeding and weaving at about 2:30 a.m. The police officer reported that Applicant emitted the strong odor of alcohol; had watery and bloodshot eyes; slurred and thick-tongued speech, and was wearing a shirt that was not tucked in. He administered Applicant a field sobriety test and two breathalyzer tests. The initial breathalyzer registered 0.186 and the second breathalyzer register 0.188. He was arrested and charged with driving under the influence of alcohol (DUI).[24] Applicant denied to the police officer that the alcohol had affected his driving "to the slightest degree," and claimed he had only consumed two pints of alcohol at the bar between the hours of 9 p.m. and 11 p.m. He denied having any alcohol between 11 p.m. and his being stopped.[25] Applicant hired a local attorney for about $2,500, eventually entered a plea of guilty, and was fined about $500, and sentenced to two days in jail in his home state (SOR ¶¶ 1.c. and 2.c.).[26] Applicant subsequently contended the anti-anxiety medication he was taking at the time may have contributed to his condition that night and said it was uncharacteristic for him to drink so much.[27]

In September 2006, at about 7:30 p.m., Applicant and a friend decided to drive 30 miles to another town where they intended to have dinner and meet some friends. During an evening in which they completed dinner and visited a few bars, Applicant consumed three or four beers. On the way back home at about 4:30 a.m., they decided to have a late night breakfast at a fast food restaurant. When he entered the parking lot, Applicant drove his truck over a curb, getting stuck in the sand, and damaging the curb and a sprinkler. The police were called, and when they arrived, Applicant was very uncooperative. He furnished various inconsistent stories of what had happened and denied being the driver of the vehicle. He refused to participate in a field sobriety test, refused to take a breathalyzer test, refused to sign an acknowledgment of his Miranda Rights, and refused to answer questions. He was arrested and charged with refusal to submit to a lawful breath test, DUI, and operating a motor vehicle with expired tags (less than six months).[28] He hired an attorney, pled no contest to the DUI, and was sentenced to one year unsupervised probation, fined approximately $1,200, 50 hours of community service, his driver's license was suspended for six months (with a temporary business

[23] Applicant's Answer to the SOR, at 2; Tr. at 93, 130.

[24] GE 5 (DUI Report, dated May 13, 2006); GE 3 (PSI 2010), *supra* note 10, at 3-4; Tr. at 68-73. Applicant told the investigator from the U.S. Office of Personnel Management (OPM) that his blood-alcohol level was 0.13 percent.

[25] GE 5, *supra* note 24, at 3.

[26] GE 3 (PSI 2010), *supra* note 10, at 4.

[27] Tr. at 78.

[28] GE 6 (Arrest Report, various dates); GE 3 (PSI 2010), *supra* note 10, at 4-5; Tr. at 81-87.

permit issued after 30 days), and ordered to attend a DUI education class (SOR ¶¶ 1.b. and 2.c.).[29] His probation was terminated on January 4, 2008.[30]

In February 2009, after a day of combat readiness training, Applicant went to a bar off base to watch the Super Bowl. He arrived near the 6:30 p.m. kickoff, and consumed a varying quantity of beer. He told the OPM investigator in 2011 that he had four or five beers while watching the game.[31] He remained at the bar for a couple of hours after the game. He said he had "a few drinks" in his Answer to the SOR,[32] and during the hearing, changed his estimate to "maybe a beer an hour."[33] In any event, he passed out while sitting at the bar, and when the emergency medical technicians (EMT) were called per bar policy, he was considered unresponsive, and the police were called. When the police awakened him, Applicant became very agitated because he knew he "wasn't intoxicated" or "wasn't that intoxicated."[34] He "expressed [his] disapproval in an unacceptable manner,"[35] not otherwise described. He was arrested and charged with disorderly while intoxicated. After pleading guilty, he was fined about $400 (SOR ¶¶ 1.a. and 2.c.).[36] Applicant attributed his condition to a lack of sleep and to having taken the anti-anxiety medication.

Applicant contends that marriage and fatherhood have changed him. He initially admitted consuming alcohol from 1996, at times to the point of intoxication, until at least February 2011, and to the point of passing out until February 2009.[37] During the hearing, he acknowledged consuming four beers in one sitting soon after his wife became pregnant in February 2011 and before he promised her he would no longer consume alcohol.[38] During his period of heavy alcohol consumption while at bars, Applicant would probably consume six or seven beers, or "more than that."[39] Applicant considers the consumption of four beers to be "pushing it" to heavy consumption.[40] He would consider it unusual for him presently to drink four beers.[41] Although he denied

[29] GE 3 (PSI 2010), *supra* note 10, at 5.

[30] GE 2 (Case Details – Summary, undated).

[31] GE 3 (PSI 2011), *supra* note 14, at 1.

[32] Applicant's Answer to the SOR, at 1.

[33] Tr. at 99.

[34] Tr. at 121.

[35] Applicant's Answer to the SOR, at 1; Tr. at 129.

[36] GE 3 (PSI 2011), *supra* note 14, at 1.

[37] Applicant's Answer to the SOR, at 3.

[38] Tr. at 144; GE 3 (PSI 2011), *supra* note 14, at 3.

[39] Tr. at 147-148.

[40] Tr. at 144.

[41] Tr. at 144.

having an alcohol problem when his was interviewed in 2010,[42] Applicant now concedes that he has an alcohol problem, and he needs to stay away from alcohol.[43] He contends he has neither a taste nor a need for alcohol.[44] He acknowledged his "irresponsible decision was to take the first drink," and added: "I should have never taken the first drink."[45] Nevertheless, despite swearing off alcohol, he acknowledging consuming a friend's home-brewed beer two weeks before the hearing and another beer about two weeks before that.[46] Applicant contended his alcohol-related arrests were isolated incidents and not part of a pattern of alcohol abuse.[47]

Other than the one day Air Force ASAP educational class and the DUI education class, Applicant never received any alcohol treatment or alcohol counseling.[48] He acknowledged it might have been wise if he had gone to Alcoholics Anonymous (AA), but he simply swept the issue under the rug and wanted to ignore it.[49]

Personal Conduct

On September 8, 2010, when Applicant completed his SF 86, he responded to certain questions pertaining to his police record. Question 22b. asked if, in the last seven years, he had been arrested by any police or other law enforcement authority; and Question 22e. asked if he had ever been charged with any offenses related to alcohol or drugs. Applicant answered "yes" to both questions and listed two such incidents: his May 2006 and September 2006 arrests. He certified that the responses were "true, complete, and correct" to the best of his knowledge, but the responses to the above two questions were, in fact, false, for he had omitted the January 2006 and February 2009 arrests. He subsequently denied intending to falsify his responses, and explained that he had been busy at work and set aside very little time to complete the SF 86. He was more focused on the DUI incidents, which "weighed much heavier in [his] mind."[50] He contended the omissions were simple mistakes.[51]

Two months later, while undergoing an interview conducted by OPM in connection with his security clearance application, Applicant again discussed the May 2006 and September 2006 arrests. He denied having any other alcohol-related

[42] GE 3 (PSI 2010), *supra* note 10, at 6.

[43] Tr. at 148.

[44] Tr. at 149.

[45] Tr. at 89.

[46] Tr. at 126-127, 149.

[47] GE 3 (PSI 2010), *supra* note 10, at 6.

[48] Tr. at 140.

[49] Tr. at 138-141.

[50] Applicant's Answer to the SOR, at 4; Tr. at 115, 118, 132.

[51] Applicant's Answer to the SOR, at 4.

incidents.[52] Upon being asked a second time by the investigator if he was sure there were no other alcohol-related incidents, Applicant finally acknowledged that there was an incident where he was in an argument with a club bouncer (referring to the January 2006 incident), but he denied he was arrested or charged with a crime. He also denied he had to pay a fine.[53] He indicated he was under pressure to meet other obligations for that work day, and because he was anxious to conclude the interview, he forgot to bring up the two disorderly while intoxicated incidents of January 2006 and February 2009.[54] Both of Applicant's responses to the investigator were false. On February 4, 2011, before being interviewed again by the OPM investigator, Applicant admitted the alcohol-related incidents of 2000 and February 2009.[55] Once again, Applicant contended the omissions were simple mistakes.[56]

Character References and Work Performance

Applicant's enlisted performance ratings generally reflected an individual who was "absolutely superior in all areas" who should be immediately promoted. He was characterized as an exceptional performer, super achiever, and technical genius, who "does the job right the first time, every time," and was recommended for promotion below-the-zone.[57] His performance reviews from his current employer also reflect a commendable (periodically exceeds requirements of the job) to outstanding (consistently exceeds job requirements in all key areas) performance. His "attention to detail ensures that the task is done right the first time, every time."[58] Applicant's former direct supervisor and coworkers have characterized him as hard-working, honest, trusted, very reliable, and organized.[59] His project engineer described Applicant as a "dedicated worker with an attention to detail."[60]

[52] GE 3 (PSI 2010), *supra* note 10, at 5.

[53] GE 3 (PSI 2010), *supra* note 10, at 5.

[54] Applicant's Answer to the SOR, at 4-5.

[55] GE 3 (PSI 2011), *supra* note 14, at 1.

[56] Applicant's Answer to the SOR, at 4.

[57] AE G (Enlisted Performance Report, dated February 7, 2002); AE H (Enlisted Performance Report, dated September 27, 2002); AE I (Enlisted Performance Report, dated September 28, 2003).

[58] AE K (Performance Review, dated September 17, 2012). See also, AE L (Performance Review, dated September 9, 2011); AE M (Performance Review, dated September 15, 2010); AE N (Performance Review, dated September 14, 2009); AE O (Performance Review, dated September 12, 2008); AE P (Performance Review, dated September 19, 2007); AE Q (Performance Review, dated December 13, 2006); AE X (Performance Review, dated December 9, 2005).

[59] AE R (Character Reference, undated); AE S (Character Reference, undated); AE U (Character Reference, dated April 17, 2013); AE V (Character Reference, dated April 18, 2013).

[60] AE T (Character Reference, dated April 17, 2013).

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance."[61] 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. 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."[62]

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

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. 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 meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."[63] The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.[64]

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This

[61] *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

[62] Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

[63] "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

[64] *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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. Furthermore, "security clearance determinations should err, if they must, on the side of denials."[65]

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."[66] Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. 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.

Analysis

Guideline J, Criminal Conduct

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

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

The guideline notes several conditions that could raise security concerns. Under AG ¶ 31(a), *a single serious crime or multiple lesser offenses* is potentially disqualifying. Applicant's history of criminal conduct consists of five arrests and convictions for alcohol-related incidents. AG ¶ 31(a) has been established.

The guidelines also include examples of conditions that could mitigate security concerns arising from criminal conduct. Under AG ¶ 32(a), the disqualifying condition may be mitigated where *so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.* In addition, AG ¶ 32(d) may apply when *there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity,*

[65] *Egan*, 484 U.S. at 531

[66] *See* Exec. Or. 10865 § 7.

remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

AG ¶¶ 32(a) and 32(d) partially apply. Applicant's criminal conduct commenced in 2000 and continued until February 2009, a little over four years ago. Following each incident, Applicant was involved in both the police and court systems. He spent brief periods in jail, paid fines, lost his driving privileges, did community service, attended education classes, and was placed on probation. During the first nine months in 2006, he was involved in three such incidents. No type of punishment seemed to work. Applicant argued that this is not a pattern of misconduct, but rather a series of similar isolated incidents. His argument is simply not reasonable, under the circumstances.

Nevertheless, there is some evidence of successful rehabilitation which essentially started when Applicant got married and purportedly stopped driving when he decided to consume alcohol. There has been no further SOR-alleged criminal conduct during the past four-year period. A person should not be held forever accountable for misconduct from the past, without a clear indication of subsequent reform, remorse, or rehabilitation. Applicant has expressed remorse for his past criminal conduct and reformed his habits, and he has an outstanding employment record as both a member of the military and as an employee of a government contractor.

Guideline G, Alcohol Consumption

The security concern relating to the guideline for Alcohol Consumption is set out in AG ¶ 21:

> Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

The guideline notes several conditions that could raise security concerns. Under 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* is potentially disqualifying. In addition, *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*, may apply under AG ¶ 22(c). AG ¶ 22(a) has been established by Applicant's two DUI convictions, his two disorderly while intoxicated convictions, and his lewd behavior conviction; and AG ¶ 22(c) has been established, because Applicant repeatedly consumed alcohol to the point of impaired judgment.

The guidelines also include examples of conditions that could mitigate security concerns arising from alcohol consumption. Under AG ¶ 23(a), the disqualifying condition may be mitigated where *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. In addition, when *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),* AG ¶ 23(b) may apply.

AG ¶ 23(b) minimally applies and AG ¶ 23(a) does not apply. Applicant contends that marriage and fatherhood have changed him. He initially admitted consuming alcohol from 1996, at times to the point of intoxication, until at least February 2011, and to the point of passing out until February 2009. During the hearing, he acknowledged consuming four beers in one sitting soon after his wife became pregnant in February 2011, and before he promised her he would no longer consume alcohol. He admitted that during his period of heavy alcohol consumption while at bars, Applicant would probably consume six or seven beers, or "more than that." Applicant acknowledges the consumption of four beers to be "pushing it" to heavy consumption, and he would consider it unusual for him presently to drink four beers. Although he denied having an alcohol problem when he was interviewed in 2010, Applicant now concedes that he has an alcohol problem, and he needs to stay away from alcohol. He contends he has neither a taste nor a need for alcohol. He acknowledged his "irresponsible decision was to take the first drink," and added: "I should have never taken the first drink."

Nevertheless, despite swearing off alcohol, and having neither a taste nor a need for alcohol, Applicant has not been abstinent. He acknowledged consuming a friend's home-brewed beer two weeks before the hearing and another beer about two weeks before that. Applicant contended his alcohol-related arrests were isolated incidents and not part of a pattern of alcohol abuse. That position is consistent with my impression that Applicant has consistently minimized the significance of alcohol in his life, minimized the quantity of alcohol consumed, and essentially ignored his "irresponsible decision" to continue consuming alcohol even in a reduced quantity or frequency. Accordingly, it is likely that his alcohol abuse will recur and it does cast doubt on Applicant's current reliability, trustworthiness, or good judgment.

Furthermore, after careful consideration of the Appeal Board's jurisprudence on alcohol consumption, I conclude Applicant's continued alcohol consumption after his alcohol-related convictions and minimizing his alcohol problem indicates he is unwilling or unable to curtail his alcohol consumption. As such, his conduct demonstrates a lack of judgment and/or a failure to control impulses which is inconsistent with the holder of a security clearance.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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

> and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 16(a), it is potentially disqualifying if there is

> 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.

In addition, under AG ¶ 16(b), *deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative*, may raise security concerns.

On September 8, 2010, when Applicant completed his SF 86, he responded to two questions pertaining to his police record. One question asked if, in the last seven years, he had been arrested by any police or other law enforcement authority; and the other question asked if he had ever been charged with any offenses related to alcohol or drugs. Applicant answered "yes" to both questions and listed only his May 2006 and September 2006 arrests. He certified that the responses were "true, complete, and correct" to the best of his knowledge, but the responses to the above two questions were, in fact, false, for he had omitted the January 2006 and February 2009 arrests. He subsequently denied intending to falsify his responses, and explained that he had been busy at work and set aside very little time to complete the SF 86. He was more focused on the DUI incidents, which "weighed much heavier in [his] mind." He contended the omissions were simple mistakes.

Two months later, while undergoing an interview conducted by OPM in connection with his security clearance application, Applicant again discussed the May 2006 and September 2006 arrests. He denied having any other alcohol-related incidents. Upon being asked a second time by the investigator if he was sure there were no other alcohol-related incidents, Applicant finally acknowledged the January 2006 incident, but he denied he was arrested or charged with a crime. He also denied he had to pay a fine. Once again, he indicated he was under pressure to meet other obligations for that work day, and because he was anxious to conclude the interview, he forgot to bring up the two disorderly while intoxicated incidents of January 2006 and February 2009. Both of Applicant's responses to the investigator were false. In February 2011, before being interviewed again by the OPM investigator, Applicant finally admitted the alcohol-related incidents of 2000 and February 2009. Once again, Applicant contended the omissions were simple mistakes.

He denied the false responses were deliberate or an attempt to falsify the material facts. His explanations regarding both his SF 86 and his OPM interview are at odds with the characterizations of him made by his character references: that "the task

is done right the first time, every time," and that Applicant is a "dedicated worker with an attention to detail." Applicant's actions are, however, consistent with his pattern of denial and falsification regarding his relationship with the law enforcement authorities in denying he was intoxicated, minimizing the quantity of alcohol consumed, denying his behavior in 2000, denying he was driving in 2006, and denying the circumstances surrounding several of the incidents.

I have considered Applicant's educational background, military career, and current professional career, in analyzing his actions. Applicant is an intelligent, talented, and experienced individual, but his explanations, to be accepted, require that a substantial degree of unreasonableness be ignored. If Applicant had acknowledged the deliberate nature of his more recent actions and expressed that it was foolish on his part to have falsified his responses and concealed the truth, his actions might have been considered aberrant behavior out of character for him. However, Applicant clings to his explanation that the actions were merely mistakes. His position is unreasonable. AG ¶¶ 16(a) and 16(b) have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct. AG ¶ 17(a) may apply if *the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts*. 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 cast doubt on the individual's reliability, trustworthiness, or good judgment*, AG ¶ 17(c) may apply. Applicant omitted and concealed relevant facts from his September 2010 SF 86 and during his November 2010 OPM interview. In February 2011, before being interviewed again by the OPM investigator, Applicant finally admitted the remaining alcohol-related incidents. AG ¶ 17(a) minimally applies as to Applicant's OPM interview, but AG ¶ 17(c) does not 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 the 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 common sense judgment based upon careful

consideration of the guidelines and the whole person concept. I have incorporated my comments under Guidelines J, G, and E in my analysis below.

There is substantial evidence in favor of mitigating Applicant's conduct. Applicant has been gainfully employed by the same defense contractor since March 2005, and previously served on active duty with the U.S. Air Force from May 2000 until he was honorably discharged in May 2004. While on active duty, he was deployed on three occasions in support of Operation Enduring Freedom (Afghanistan), Operation Shining Express (Liberia), and Operation Iraqi Freedom (Iraq). As a civilian employee, he has been involved in establishing and maintaining disaster communications during Hurricane Katrina, the earthquake in Haiti, the Asian tsunami, and the nuclear reactor disaster in Japan. He is a respected member of his employer's workforce. His rather cavalier attitude regarding alcohol resulted in at least six alcohol-related incidents involving either military or law enforcement authorities, but the most recent such incident occurred over four years ago. His alcohol consumption changed after he was married and became a father.

The disqualifying evidence under the whole-person concept is more substantial. Applicant is an alcohol abuser who has two DUI convictions, two disorderly while intoxicated convictions, and a lewd behavior conviction, between 2000 and 2009. He spent time in jail, paid fines, lost his driving privileges, did community service, attended education classes, and was placed on probation. Nevertheless, he continued to consume alcohol. Although he denied having an alcohol problem when he was interviewed in 2010, Applicant now concedes that he has an alcohol problem, and he needs to stay away from alcohol. He contends he has neither a taste nor a need for alcohol. He acknowledged his "irresponsible decision was to take the first drink," and added: "I should have never taken the first drink."

Nevertheless, despite swearing off alcohol, and having neither a taste nor a need for alcohol, Applicant has not been abstinent. Applicant contended his alcohol-related arrests were isolated incidents and not part of a pattern of alcohol abuse. Applicant has consistently minimized the significance of alcohol in his life, minimized the quantity of alcohol consumed, and essentially ignored his "irresponsible decision" to continue consuming alcohol even in a reduced quantity or frequency. It is likely that his alcohol abuse will recur and it does cast doubt on Applicant's current reliability, trustworthiness, or good judgment.

Of equal significance is Applicant's lack of candor. He was less than forthright in some of his answers to questions in his SF 86, as well during his OPM interview. He denied the false responses were deliberate or an attempt to deceive the government about the material facts. His explanations regarding both his SF 86 and his OPM interview are at odds with the characterizations of him made by his character references: that "the task is done right the first time, every time," and that Applicant is a "dedicated worker with an attention to detail." Applicant's actions are, however, consistent with his pattern of denial and falsification regarding his relationship with the law enforcement authorities in denying he was intoxicated, minimizing the quantity of

alcohol consumed, denying his behavior in 2000, denying he was driving in 2006, and denying the circumstances surrounding several of the incidents.

I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.[67] Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude he has mitigated the criminal conduct security concerns, but failed to mitigate the alcohol consumption and personal conduct security concerns. (*See* AG ¶¶ 2(a)(1) - 2(a)(9).)

I take this position based on the law, as set forth in *Department of Navy v. Egan,* 484 U.S. 518 (1988), my careful consideration of the whole person factors and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has not mitigated or overcome the Government's case. For the reasons stated, I conclude he is not eligible for access to classified information.

Formal Findings

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

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

[67] *See U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); *See also* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge