



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 11-07622
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

11/27/2012

Decision

Harvey, Mark, Administrative Judge:

From 1989 to 2010, Applicant was arrested for four alcohol-related offenses. He is not permitted to drive by the State. He will be on probation for his most recent criminal offense until March 2014. Criminal conduct concerns are not mitigated. On March 2, 2010, he ended his alcohol consumption. Personal conduct and alcohol consumption concerns are mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On January 6, 2011, Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) or SF 86. (GE 1) On May 25, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) the President promulgated on December 29, 2005.

The SOR alleged security concerns under Guidelines G (alcohol consumption), J (criminal conduct), and E (personal conduct). (Hearing Exhibit (HE) 2) The SOR detailed reasons why DOHA was unable to find that it is clearly consistent with the

national interest to grant or continue a security clearance for Applicant, and it recommended that his case be submitted to an administrative judge for a determination whether his clearance should be granted, continued, denied, or revoked.

On June 12, 2012, Applicant responded to the SOR. (HE 3) On October 3, 2012, Department Counsel indicated he was ready to proceed on Applicant's case. On October 11, 2012, DOHA assigned Applicant's case to me. On October 15, 2012, Department Counsel emailed Applicant about his hearing on November 5, 2012, and on October 31, 2012, DOHA issued a hearing notice, formally setting the hearing for November 5, 2012. (Tr. 17-18; HE 1) Applicant's hearing was held as scheduled using video teleconference. Applicant waived his right to 15 days of notice of the date, time, and place of his hearing. (Tr. 18) Department Counsel offered three exhibits, and Applicant provided an email and 12 pages of documents. (Tr. 21-22, 41-42; GE 1-3; pg. 1-13) There were no objections, and I admitted the proffered documents. (Tr. 21-22, 41-42) Additionally, I admitted the hearing notice, SOR, and Applicant's response to the SOR. (HE 1-3) On November 14, 2012, I received the transcript. The record was held open until November 20, 2012, to permit Applicant to provide additional evidence. (Tr. 76-77; pg. 15) Applicant provided a letter after his hearing, which was admitted without objection. (pg. 19-20)

Findings of Fact¹

Applicant's SOR response admitted the SOR allegations in general terms. He also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact.

Applicant is a 43-year-old employee of a defense contractor, who has worked as a laborer for four years. (Tr. 7-8, 42; GE 1) He performs labor in maintenance, utilities, housekeeping, and otherwise as needed. (Tr. 8) He earns \$35 an hour or about \$70,000 per year. (Tr. 43, 71) In 1987, he graduated from high school. (Tr. 7) He has 38 college credits. (Tr. 7) He has never served in the military. (Tr. 7-8) He has never married. (Tr. 8-9) He has two children, who are ages 13 and 25. (Tr. 9, 45; GE 1)

Alcohol consumption and criminal conduct

In early 1989, Applicant was arrested and charged with Driving Under the Influence of Alcohol and/or Controlled Substances. (Tr. 53) He was under the age of 21 when he was arrested. (Tr. 54) He was unsure whether he was convicted and the result of his court case. (Tr. 54)

On September 18, 1998, Applicant and his son's mother were in an argument, which became physical. (Tr. 55-57) Applicant left in his vehicle, and he was charged with Driving Under the Influence of Alcohol and/or Controlled Substances. (Tr. 55) He was found guilty and sentenced to 60 days in jail, a \$500 fine, revocation of his driver's

¹Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

license, and two years of probation. (Tr. 56) Applicant complied with all of the terms of his probation, except he may have consumed alcohol. (Tr. 56-57) He did his “best to abstain” from alcohol consumption. (Tr. 57)

On February 6, 2006, Applicant was attending a Super Bowl party with his six-year-old son. (Tr. 58, 62) He left the party after consuming alcohol. (Tr. 62) He was arrested and charged with (1) Driving Under the Influence of Alcohol and/or Controlled Substances, (2) Refusal to Submit to a Chemical Test, (3) Possession of a Controlled Substance, (4) Endangering the Welfare of a Minor, (5) Speeding, and (6) Failure to Wear Seatbelts. (Tr. 58) He was found guilty and sentenced to 27 days in jail (with credit for time served), a \$4,775 fine, and a 90-day suspension of his driver’s license. (Tr. 58-60) He was on probation for one to three years. (Tr. 60) He completed a 12-week outpatient alcohol counseling program. (Tr. 59) He stopped drinking alcohol for about 30 months, and then he resumed his alcohol consumption. (Tr. 62)

On March 2, 2010, Applicant was charged with (1) Snowmobile and Other Off-Highway Vehicle Operations on Highways, (2) Failure to Stop at Directions of an Officer, (3) Refusal to Submit to a Chemical Test, and (4) Driving Under the Influence of Alcohol and/or Controlled Substances. (Tr. 64) He was found guilty and sentenced to fines and costs totaling \$6,125 and to wear an ankle bracelet for 90 days. (Tr. 61-62) On March 30, 2010, his driver’s license was revoked for three years, he was ordered to complete community service, and he was placed on probation for four years (until March 2014). (Tr. 63-64, 69, 76) He still owes about \$2,000 on his fine. (Tr. 70) He expects the remainder of his fine to be paid from his state tax refund and periodic payments. (Tr. 70)

Applicant received a diagnosis of 305.0 Alcohol Abuse² and was recommended for a Level II-Intensive Outpatient Program. (pg. 17) The qualifications of the person providing the diagnosis are not provided. (pg. 20) Applicant completed the Level II-Intensive Outpatient Program on October 5, 2010. (Tr. 63; pg. 20) He also attended some Alcoholics Anonymous (AA) meetings. (Tr. 71-72) He has not attended any

²In an November 12, 2012 email, his counselor, quoting from *Diagnostic and Statistical Manual of Mental Disorders DSM-IV-TR Fourth Edition (Text Revision)*, defined alcohol abuse as follows:

Alcohol Abuse - Diagnostic Code 305.00

A. A maladaptive pattern of alcohol use leading to clinically significant impairment or distress, as manifested by one (or more) of the following, occurring within a 12-month period:

- (1) recurrent alcohol use resulting in a failure to fulfill major role obligations at work, school, or home (e.g., repeated absences or poor work performance related to alcohol use; alcohol-related absences, suspensions, or expulsions from school; neglect of children or household)
- (2) recurrent alcohol use in situations in which it is physically hazardous (e.g., driving an automobile or operating a machine when impaired by alcohol use)
- (3) recurrent alcohol-related legal problems (e.g., arrests for alcohol-related disorderly conduct)
- (4) continued alcohol use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the alcohol (e.g., arguments with spouse about consequences of intoxication, physical fights) (pg. 16)

alcohol rehabilitation or counseling programs for about a year. (Tr. 65, 72, 74) He does not go to bars. He said he has been 100 percent sober since his arrest on March 2, 2010. (Tr. 62, 64) He receives substantial support from family and friends. (Tr. 73)

Personal conduct

The SOR alleges that Applicant was subjected to restraining orders in 2003 and 2006 based upon the petitions of the mother of his youngest child. Applicant has a 70-30 percent court-ordered split of custody of his 13-year-old son with his son's mother. (Tr. 45-46) The 2006 restraining order was issued because Applicant's son was with him when he was driving under the influence of alcohol. (Tr. 46) About a month after he was released from jail, the restraining order was lifted, and Applicant was able to visit his son. (Tr. 47) Applicant's child support is paid by allotment from Applicant's salary. (Tr. 51) His child-support arrearage is paid. (Tr. 50-51) He made three \$1,000 payments to his son's mother to pay a debt relating to a snow machine. (Tr. 52-53) There have not been any restraining orders against Applicant for about five years.

Character Evidence

Applicant's second-level supervisor, a supervisor, and a retired Air Force master sergeant, who is a coworker and production coordinator, described Applicant as a good employee, who is never late for work, reliable, honest, diligent, responsible, and trustworthy (Tr. 23-40; pg. 15) Their statements support approval of his security clearance. (Tr. 23-40; pg. 15)

Applicant emphasized that he loves his country and his employment. (Tr. 78) He wants to continue his employment. (Tr. 78) He expressed regret and remorse concerning his alcohol-related offenses. Eventually, he will need a security clearance to retain his employment. (Tr. 78)

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 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 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 and modified.

Eligibility for a security clearance is predicated upon meeting the criteria contained in the adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's

overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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. Adverse clearance decisions are made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the [a]pplicant concerned.” See Exec. Or. 10865 § 7. See *also* Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this decision should be construed to suggest that I have based this decision 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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “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). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concerns are under Guidelines G (alcohol consumption), J (criminal conduct), and E (personal conduct) with respect to the allegations set forth in the SOR.

Alcohol Consumption

AG ¶ 21 articulates the Government's concern about alcohol consumption, "[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 and trustworthiness."

Seven Alcohol Consumption disqualifying conditions could raise a security or trustworthiness concern and may be disqualifying in this case. AG ¶¶ 22(a) - 22(g) provide:

- (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;
- (b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;
- (c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;
- (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;
- (e) evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program;
- (f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program; and
- (g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

AG ¶¶ 22(b), 22(d), 22(e), 22(f), and 22(g) do not apply. Applicant did not have any alcohol-related incidents at work, did not violate any court orders, and did not have a diagnosis of alcohol abuse or dependence alleged in his SOR. The credentials of the person diagnosing Applicant with "alcohol abuse" in 2010 are not part of the record. His evaluation of alcohol abuse may not have been by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program. He did not suffer a relapse after being diagnosed as suffering from alcohol abuse in 2010.

Applicant engaged in binge-alcohol consumption to the extent of impaired judgment on some of the occasions when he was arrested.³ His excessive alcohol consumption resulted in arrests, convictions, and various penalties imposed by the courts. AG ¶ 22(a) and 22(c) apply.

Four Alcohol Consumption Mitigating Conditions under AG ¶¶ 23(a)-23(d) are potentially applicable:

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

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

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

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

AG ¶ 23(a), 23(b), and 23(d) apply. Applicant completed the Level II-Intensive Outpatient Program on October 5, 2010 and attended some AA meetings. He has not attended any alcohol rehabilitation or counseling program for about a year. He has been 100 percent sober since his arrest on March 2, 2010. He receives substantial support from family and friends. His alcohol consumption occurred "under such unusual circumstances," as he has not consumed alcohol in more than two years, and he does not go to bars. Even though he has a lengthy history of alcohol consumption, which resulted in four arrests, enough time has elapsed in sustained abstinence to fully

³Although the term "binge" drinking is not defined in the Directive, the generally accepted definition of binge drinking for males is the consumption of five or more drinks in about two hours. The definition of binge drinking was approved by the National Institute on Alcohol Abuse and Alcoholism (NIAAA) National Advisory Council in February 2004. See U.S. Dept. of Health and Human Services, NIAAA Newsletter 3 (Winter 2004 No. 3), <http://www.pubs.niaaa.nih.gov/publications/Newsletter/winter2004/NewsletterNumber3.pdf>. There is no evidence of any consumption of alcohol since March 2, 2010.

establish his alcohol consumption is under control, and his alcohol consumption no longer casts doubt on Applicant's "current reliability, trustworthiness, or good judgment."

AG ¶ 23(c) does not apply. Although he completed an alcohol abuse counseling program in 2010, he does not currently attend AA meetings, and he does not currently attend any other alcohol treatment or counseling program.

Security clearance cases are difficult to compare, especially under Guideline G, because the facts, degree, and timing of the alcohol abuse and rehabilitation show many different permutations. The DOHA Appeal Board has determined in cases of more substantial alcohol abuse than Applicant's that AG ¶ 23(b) did not mitigate security concerns unless there was a fairly lengthy period of abstaining from alcohol consumption. See ISCR Case No. 06-17541 at 3-5 (App. Bd. Jan. 14, 2008); ISCR Case No. 06-08708 at 5-7 (App. Bd. Dec. 17, 2007); ISCR Case No. 04-10799 at 2-4 (App. Bd. Nov. 9, 2007). For example, in ISCR Case No. 05-16753 at 2-3 (App. Bd. Aug. 2, 2007) the Appeal Board reversed the administrative judge's grant of a clearance and noted, "That Applicant continued to drink even after his second alcohol related arrest vitiates the Judge's application of MC 3."

In ISCR Case No. 05-10019 at 3-4 (App. Bd. Jun. 21, 2007), the Appeal Board reversed an administrative judge's grant of a clearance to an applicant (AB) where AB had several alcohol-related legal problems. However, AB's most recent DUI was in 2000, six years before an administrative judge decided AB's case. AB had reduced his alcohol consumption, but still drank alcohol to intoxication, and sometimes drank alcohol (not to intoxication) before driving. The Appeal Board determined that AB's continued alcohol consumption was not responsible, and the grant of AB's clearance was arbitrary and capricious. See *also* ISCR Case No. 04-12916 at 2-6 (App. Bd. Mar. 21, 2007) (involving case with most recent alcohol-related incident three years before hearing, and reversing administrative judge's grant of a clearance).

After careful consideration of the Appeal Board's jurisprudence on alcohol consumption, I conclude his successful completion of an intensive outpatient alcohol counseling and treatment program and his abstinence from alcohol consumption since March 2, 2010, sufficiently reduces my doubts about Applicant's alcohol consumption to mitigate security concerns under Guideline G.

Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct, "Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations."

AG ¶ 31 describes three conditions that could raise a security concern and may be disqualifying in this case, "(a) a single serious crime or multiple lesser offenses," "(c) allegation or admission of criminal conduct, regardless of whether the person was

formally charged, formally prosecuted or convicted,” and “(d) individual is currently on parole or probation.”

AG ¶¶ 31(a), 31(c), and 31(d) apply. From 1989 to 2010, Applicant was arrested for four alcohol-related offenses. All four offenses resulted in convictions, fines, and other penalties. He will remain on probation until March 2014.

AG ¶ 32 provides four conditions that could potentially mitigate security concerns:

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

(b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) evidence that the person did not commit the offense; and

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

Although none of the mitigating conditions fully apply, there are important mitigating factors. The most recent offense occurred on March 2, 2010, and is not particularly recent. Applicant complied with all the terms of his most recent probation. He has been continuously employed since 2008. He expressed regret and remorse concerning his alcohol-related offenses.

Significant factors weighing against mitigating criminal conduct concerns remain. He will remain on probation until March 2014. The State has determined that the passage of more time under the limitations of his probation and without any criminal misconduct is necessary to protect society and establish rehabilitation. More time must elapse before there is enough assurance that criminal conduct and other behavior raising security concerns is unlikely to recur. Applicant is not ready to be entrusted with access to classified information at this time.

Personal Conduct

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

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.

Applicant's personal conduct concerns involve his criminal conduct as discussed in the previous section. AG ¶ 16 provides two conditions which may be applicable:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: . . . (3) a pattern of dishonesty or rule violations; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Applicant's criminal offenses, as discussed in the previous section, violate criminal statutes and important rules in our society. Restraining orders were issued against Applicant in 2003 and 2006. The basis for the 2006 restraining order was his driving under the influence of alcohol with his six-year-old son in his vehicle. His alcohol-related offenses and his restraining order are conduct a person might wish to conceal, as it adversely affects his professional and community standing. AG ¶¶ 16(d)(3) and 16(e)(1) are established.

AG ¶ 17(c) provides, "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." The protective order issued in 2006 relates to conduct over six years ago. Applicant has refrained from alcohol consumption since March 2, 2010, and I have credited Applicant with mitigating the 2003 and 2006 restraining orders under AG ¶ 17(c).

The mitigating condition outlined in AG ¶ 17(e), "the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress" partially applies. Security officials, the police, the probation office, and the state courts are well aware of Applicant's misconduct. The documentation in his security file and in his criminal records eliminates any vulnerability to exploitation, manipulation, or duress. I do not believe Applicant would compromise national security to avoid public disclosure of his misconduct. His criminal offenses are discussed under the criminal conduct guideline. Any personal conduct security concerns pertaining to his criminal offenses are dealt with more thoroughly under Guideline J in this recommended decision, and

Guideline J is adequate to fully address Applicant's case without resort to the catch-all provisions of AG ¶ 16(d) of the personal conduct guideline.

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 commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guidelines G, J, and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Some facts support mitigation of security concerns under the whole-person concept; however, they are insufficient to fully mitigate security concerns. Applicant is a 43-year-old employee of a defense contractor, who has worked as a laborer for four years. In 1987, he graduated from high school, and he has 38 college credits. His children are ages 13 and 25. He is current on his child support. He is not under any restrictive court orders concerning visitation with his son. Applicant's second-level supervisor and a retired Air Force master sergeant describe Applicant as a good employee, who is reliable, honest, diligent, responsible, and trustworthy. He expressed regret and remorse concerning his alcohol-related offenses. He is an intelligent person who knows what he must do to establish his reliability and responsibility. His alcohol consumption is the primary cause of his four criminal offenses, and he has abstained from alcohol consumption since March 2010. He has complied with all probation requirements, and I am confident he will successfully complete probation in March 2014. Applicant loves his country and his employment. There is no evidence of security violations, disloyalty, or that he would intentionally violate national security. He has made important progress towards mitigation of security concerns.

The evidence against approval of Applicant's clearance is more substantial at this time. From 1989 to 2010, Applicant was arrested for four alcohol-related offenses. He is still on probation for his most recent offense, and he will remain on probation until March 2014. He still owes about \$2,000 on his court-ordered fine from his most recent

alcohol-related criminal offense. His criminal offenses show lack of judgment and “raise[s] questions about [Applicant’s] reliability, trustworthiness and ability to protect classified information.” See AG ¶ 15. Should Applicant successfully complete his probation and not resume his alcohol consumption, he will be a good candidate for a security clearance. More time is needed without criminal conduct to fully mitigate security concerns.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude personal conduct and alcohol consumption concerns are mitigated; however, criminal conduct considerations concerns are not fully mitigated. For the reasons stated, I conclude he is not eligible for access to classified information at this time.

Formal Findings

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

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

Conclusion

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

MARK HARVEY
Administrative Judge