



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-09227
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gregg A. Cervi, Esquire, Department Counsel  
For Applicant: *Pro se*

09/23/2013

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**Decision**

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HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is denied.

**Statement of the Case**

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on February 28, 2011. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on December 13, 2012, detailing security concerns under Guideline H, Drug Involvement, Guideline G, Alcohol Consumption, and Guideline E, Personal Conduct. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR on January 9, 2013, and he answered it on February 18, 2013. Applicant requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on May 2, 2013, and I received the case assignment on May 16, 2013. DOHA issued a Notice of Hearing on July 5, 2013, and I convened the hearing as scheduled on July 23, 2013. The Government offered exhibits (GE) marked as GE 1 through GE 7, which were received and admitted into evidence without objection. Applicant testified. He submitted one exhibit marked as AE A, which was received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on August 1, 2013. I held the record open until August 13, 2013, for Applicant to submit additional matters. Applicant timely submitted AE B and AE C, which were received and admitted without objection. The record closed on August 13, 2013.

### **Procedural Rulings**

#### **Notice**

Applicant received the notice of the date, time and place of the hearing less than 15 days before the hearing. I advised Applicant of his right, under ¶ E3.1.8. of the Directive, to receive the notice 15 days before the hearing. Applicant affirmatively waived this right under the Directive. (Tr. 12.)

#### **Motions**

At the hearing, Department Counsel requested a correction be made to ¶ 3.b. of the SOR. Specifically, Department Counsel requested that the reference to Question 22a be changed to correctly state Question 22e because Question 22e was the appropriate number. Applicant did not object. Department Counsel's request to amend the SOR was granted. SOR allegation 3.b. is corrected as requested. (Tr. 11)

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a-1.d and 2.a-2.g of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 3.a-3.d of the SOR.<sup>1</sup> He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

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<sup>1</sup>When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). 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. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

Applicant, who is 45 years old, works at an information technology help desk for a DOD contractor. He began his current employment in November 2010. Following a four-month period of unemployment from March 2009 until July 2009, Applicant and his family moved from State A to State B in 2009.<sup>2</sup>

Applicant graduated from high school. He earned a bachelor's degree in television production and later, an associate's degree in telecommunications management. Applicant continues to upgrade his technology training. Applicant and his wife married in October 1994. They have one son, who is 15 years old.<sup>3</sup>

## **Alcohol**

As a 16-year-old high school student, Applicant attended social events where he occasionally consumed alcohol and smoked marijuana. He continued to consume alcohol and smoke marijuana with friends on weekends in college. In his mid-twenties, his alcohol consumption increased from occasional weekend drinking to consuming three to four beers two to three nights a week. Within two years, his alcohol consumption had increased to consuming a 12-pack of beer, one-half gallon of wine, or 10 to 15 shots of liquor almost every night of the week. He acknowledged drinking to intoxication, being out-of-control, and impaired. He drank alcohol after work.<sup>4</sup>

In April 1995, while driving home from work, Applicant hit a cement divider and destroyed the tire on his car. The police arrived after receiving a telephone call about a drunk driver on the road. Applicant failed the field sobriety tests conducted by the police and blew a .10% blood alcohol level on the breathalyzer. The police arrested and charged him with driving under the influence (DUI). In court, he pled guilty to DUI. The court sentenced him to attend a one-day alcohol awareness program and fined him \$1,200.<sup>5</sup>

One year later, when Applicant was driving home after a party, the police stopped, arrested, and charged him with DUI after he failed the field sobriety tests. Applicant pled guilty to his second DUI charge. The court suspended his driver's license for six months, fined him \$1,500, and directed that he attend a two-day alcohol awareness class, obtain an alcohol evaluation by a counselor, and attend Alcoholics Anonymous (AA) once a week for six months.<sup>6</sup>

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<sup>2</sup>GE 1.

<sup>3</sup>*Id.*; Tr. 25.

<sup>4</sup>GE 2; Tr. 25-26.

<sup>5</sup>GE 2; GE 7; Tr. 41-42.

<sup>6</sup>GE 2; GE 7; Tr. 42-43.

By 1996, Applicant's alcohol consumption created problems at home and at work. For these reasons and in compliance with the court requirements, Applicant met with an alcohol counselor, qualifications unknown. After meeting with the counselor and on his own initiative, Applicant decided to seek treatment. He voluntarily committed himself for inpatient treatment at an alcohol treatment center, where he was diagnosed as alcohol dependent. He completed the one week inpatient treatment program. Upon his release from treatment, he began attending AA meetings two or three times a week. He continued with AA meetings for seven years. He remained sober during this time. The treatment records for 1996 are not in evidence.<sup>7</sup>

Applicant resumed his alcohol consumption in 2003 for reasons not known to him. He continued to drink regularly and to excess. He attempted to stop drinking on several occasions, but did not maintain sobriety. On July 3, 2011, the police stopped, arrested, and charged him with DUI. Applicant pled guilty to driving while impaired, a misdemeanor, and the court dismissed the failure to stay in one lane misdemeanor charge in December 2011. The court sentenced him to 180 days in jail, with 178 days suspended; fined him \$1,940, \$600 suspended; and placed him on 12 months of supervised probation conditioned upon no violations of the law, no use of alcohol or drugs, obtaining an assessment from NEFA (No Excuse For Abuse), and submitting to random drug testing.<sup>8</sup>

Following his DUI arrest in July 2011, Applicant decided he needed to stop consuming alcohol. He sought counseling to get "on the right path and help me understand why I started drinking again." On July 19, 2011 and before any court appearance for this DUI, Applicant voluntarily entered a medical treatment facility, seeking treatment for his acute alcohol withdrawal symptoms. The night before his admission, he drank three-fourths of a liter of rum, a normal amount of alcohol for him to consume in one day. The treatment center records reflect a .23% blood alcohol level, but a toxicity screen was negative for any drugs. Three days later the treatment center released him with a strong recommendation for intensive outpatient rehabilitation programs. The treatment center also placed him on 50 mg of Naltrexone, a drug to control his alcohol cravings, 50 mg of Vistaril, an anxiety drug, and three medications for a sinus infection.<sup>9</sup>

Applicant returned to AA on August 1, 2011. He initially attended meetings twice a week, and he continues to attend meetings one to two times a week, which his wife verified. In January 2012, Applicant obtained, from a clinical social worker, the substance abuse evaluation required by the court for his 2011 DUI. He provided a social and educational history to the counselor. He also provided a history of his alcohol use, but he did not tell the counselor about his 1995 DUI arrest. He did tell the counselor

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<sup>7</sup>GE 2; Tr. 42-44, 84.

<sup>8</sup>GE 2; GE 6; Tr. 45, 69, 82-83.

<sup>9</sup>GE 2; GE 5; Tr. 45-46.

about the 1996 DUI arrest. The counselor found Applicant cooperative during the interview and concluded that his memory was intact, his thought processes were connected and organized, his mood was pleasant, and he exhibited no abnormal behaviors. The counselor's diagnostic impression included alcohol dependence by history and report. Applicant participated in 16 weeks of substance abuse treatment which focused on his individual issues, as well as education about alcohol and its effects. His alcohol tests were clean, and he remained sober. Applicant achieved his treatment goals and completed the requirements of the substance abuse program. The program discharged Applicant in June 2012.<sup>10</sup>

On his own initiative, in February 2013, Applicant started weekly sessions with a licensed social worker, who has diagnosed him with alcohol dependence and attention deficit-hyperactivity disorder (ADHD). Applicant currently takes Adderall for his ADHD with reported better focus and concentration. The weekly sessions with the social worker address issues related to his alcohol consumption. His social worker describes him as committed to his recovery from alcohol addiction and indicates that he participates in therapy and attends weekly AA meetings on his own initiative. He continues to take Naltrexone, which is non-addictive, even though his doctor has said he does not need to continue with this medication. He has not consumed alcohol since July 2011.<sup>11</sup>

Applicant credibly testified several times during the hearing that he is committed to abstaining from alcohol consumption because he cannot drink alcohol. He acknowledged that he is alcohol dependent and that with this diagnosis, he cannot drink again. He also stated that whether he gets a security clearance or not, it is important for him not to drink anymore.<sup>12</sup>

## **Marijuana**

Applicant began using marijuana occasionally about the same time he started consuming alcohol. He used it once every couple of weeks, initially; however, as his alcohol intake increased in his mid-twenties, his marijuana use increased to two or three times a week. After he married in 1994, he decreased his marijuana use to two or three times a month. He last used marijuana in October 2010. In his answer to the drug interrogatories sent to him, he stated that he has no intent to use illegal substances in the future. He no longer associates with individuals who use marijuana. He spends his time with his family and in church activities.<sup>13</sup>

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<sup>10</sup>GE 4; AE C; Tr. 28-29, 45-47, 69, 75-81.

<sup>11</sup>AE A; Tr. 45-47, 77.

<sup>12</sup>Tr. 29-30, 45, 47, 80-86.

<sup>13</sup>GE 2; GE 3; Tr. 32-35.

In July 2003, the police stopped Applicant for a damaged muffler and non-working taillight. The police officer observed marijuana seeds in Applicant's car, and during a search of Applicant's car, he found a small pipe. The police officer arrested and charged Applicant with possession of marijuana or hashish and possession of drug paraphernalia. Because this was Applicant's first drug offense, the court sent him to a drug diversion program and fined him \$675. After he completed this program, the court dismissed both charges against him on October 21, 2003. The police arrested and charged him a second time for possession of marijuana or hashish and possession of drug paraphernalia on January 6, 2007.<sup>14</sup> The court dismissed the possession of drug paraphernalia charge and convicted him of possession of marijuana or hashish. The court fined him \$1,205 and sentenced him to 80 hours of community service.<sup>15</sup>

At his security clearance hearing, Applicant also acknowledged that he did not provide an accurate history of his marijuana use to his substance abuse counselor in January 2012. He told the counselor in 2012 that he last used marijuana seven or eight years earlier when he actually last used marijuana in October 2010.<sup>16</sup> Applicant did not tell the counselor about his drug arrests in 2003 and 2007.<sup>17</sup>

## Personal Conduct

Applicant completed and signed his e-QIP on February 28, 2011. Although he answered "yes" to the questions concerning employment termination in Section 13c and concerning any drug or alcohol charges in Section 22e, the SOR alleges that he deliberately omitted relevant information from his answers. Specifically, Section 13c asks:

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<sup>14</sup>The SOR alleges two drug-related offenses in January 2007 (SOR ¶¶ 1.c and 1.d). The evidence of record indicates that Applicant was arrested only once in January 2007 for drugs or any other criminal charges. Tr. 37-39.

<sup>15</sup>GE 2; GE 7; Tr. 35, 37-39, 82-83.

<sup>16</sup>Applicant's SOR does not allege that Applicant deliberately omitted relevant information about his legal problems related to his alcohol and drug use and the recency of his drug use during his 2012 substance abuse evaluation. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

(a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

*Id.* (Citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-00633 at 3 (App. Bd. Oct. 24, 2003)). His hearing admissions about statements in January 2012 to the counselor are recent. Because these admissions and statements relate to conduct alleged under Guideline E and Applicant has notice of this conduct, these statements and admissions will be considered.

<sup>17</sup>GE 4; Tr. 69-71, 74.

1. 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 would be fired
  3. Left a job by mutual agreement following charges or allegations of misconduct
  4. Left a job by mutual agreement following notice of unsatisfactory performance
  5. Left a job for other reasons under unfavorable circumstances
  6. Laid off from job by employer

In his answer, Applicant indicated that he had been laid off in September 2010 due to a company take-over, when in fact, he had been fired for twice adding services and charges to customer accounts without the customer's consent, which was in violation of company policy, in order to meet his quota and increase his income. Applicant volunteered during his interview with an Office of Personnel Management (OPM) investigator that he was actually terminated for adding charges to customers' bills twice without permission of the customer. At the hearing, Applicant acknowledged that he did not list this information on his e-QIP because he felt guilty about his conduct which he knew was wrong.<sup>18</sup>

Section 22 of the e-QIP asks an applicant about his or her police record. Question 22e states "Have you EVER been charged with any offense(s) related to alcohol or drugs?" Applicant answered "yes" and listed his 2003 drug arrest. Applicant did not list his 2007 drug arrest or his 1995 and 1996 DUIs. The OPM investigator confronted him with his 2007 arrest information. Applicant said he did not list this arrest because he got probation. When showed the question by the investigator, he had no other explanation for his failure to list the arrest. When the OPM investigator asked him about any other drug or alcohol arrests, he told the investigator about his two DUIs. The OPM investigator indicated in the summary of his interview that this information was provided voluntarily by Applicant.<sup>19</sup>

At his hearing, Applicant testified that he did not list the DUIs on his e-QIP because he thought the two DUIs were civil charges in the state where he was arrested. Concerning the 2007 drug arrest, Applicant said that he thought he listed this arrest, but acknowledged he got the date wrong. He expressed a belief that he did not need to list his 2003 drug arrest because the case had been dismissed.<sup>20</sup>

Section 23 of the e-QIP asks an applicant about illegal drug use in the last seven years. Question 23a inquires about the use of illegal controlled substances, such as marijuana or cocaine, and Question 23c inquires about the illegal possession, purchase,

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<sup>18</sup>GE 1; GE 2, p. 3; Tr. 47-49, 64-67.

<sup>19</sup>GE 1; GE 2.

<sup>20</sup>Tr. 36, 50-51, 53, 56.

manufacture, production, trafficking, sale, shipping, receiving, or handling of illegal drugs. Applicant answered “no” to both questions. He failed to list his use of marijuana between 1984 and 2010. At the hearing, he acknowledged that his answers to these questions were untrue. He told the OPM investigator that his marijuana use was recreational and that he stopped using marijuana six or seven months before his personal subject interview in March 2011.<sup>21</sup>

At the conclusion of the hearing, Applicant stated that he is on the “right track”. He is not drinking any more, and he is being more honest.<sup>22</sup>

## **Policies**

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 used in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in 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, an applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” An applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

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

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<sup>21</sup>GE 1; GE 2, p. 5-6; Tr. 63.

<sup>22</sup>Tr. 89.



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 an 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 H, Drug Involvement**

AG ¶ 24 expresses the security concern pertaining to drug involvement:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

(a) Drugs are defined as mood and behavior altering substances, and include:

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and

(2) inhalants and other similar substances;

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

AG ¶ 25 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

(a) any drug abuse (see above definition); and

(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant began using marijuana in 1984 and used it until 2010. To use marijuana, he had to possess it and at times purchase it. Security concerns are raised under AG ¶¶ 25(a) and 25(c).

The Drug Involvement guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 26(a) through ¶ 26(d), and the following are potentially applicable:

- (b) a demonstrated intent not to abuse any drugs in the future, such as:
  - (1) disassociation from drug-using associates and contacts;
  - (2) changing or avoiding the environment where drugs were used;
  - (3) an appropriate period of abstinence; and,
  - (4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant used marijuana occasionally as a high school and college student. His marijuana use increased as his alcohol use increased. However, after he married, he reduced his marijuana use to two or three times a month, which he considered recreational use. His last arrest for drug use and drug paraphernalia occurred in 2007, more than six years ago. He last used marijuana in October 2010, nearly three years ago. He no longer associates with individuals who use marijuana. Rather, he spends his time with his family and at church. In his answer to the drug interrogatories, he indicated an intent not to use illegal drugs in the future. Although he is currently in counseling to address the reasons for his alcohol consumption, the counseling can also help him understand why he used marijuana and how to avoid triggers to future abuse. Applicant has mitigated the security concerns about his drug involvement under AG ¶ 26(b)(1-4).

### **Guideline G, Alcohol Consumption**

AG ¶ 21 expresses the security concern pertaining to alcohol consumption, “Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.”

AG ¶ 22 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

- (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;

(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;

(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; and

(f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.

After college, Applicant began to drink to excess. He acknowledges that he drank to impairment and that his alcohol consumption was out of control. His drinking behavior resulted in three DUI arrests, the last in July 2011. After his second DUI arrest in 1996, Applicant sought medical treatment. He was diagnosed as alcohol dependent in 1996 by a counselor whose credentials are unknown. A clinical social worker affiliated with a recognized treatment program again diagnosed him as alcohol dependent in 2012 and 2013. Applicant completed inpatient treatment in 1996 and participated in AA programs for seven years. However, he began drinking again. The Government has established security concerns under AG ¶¶ 22(a), 22(c), 22(e), and 22(f).

The Alcohol Consumption guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 23(a) through ¶ 23(d), and the following are potentially applicable:

(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); 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.

Applicant acknowledged at the hearing that he is alcohol dependent. After his last arrest, he decided that he needed to stop consuming alcohol. On his own initiative, he sought treatment through an inpatient facility. Shortly after his release from inpatient care, he returned to AA for additional help with his alcohol consumption. In January 2012, he enrolled in an intensive outpatient program, which he successfully completed in June 2012. During this program, his alcohol and drug tests were negative, indicating that he had been compliant with the program. He remained sober during this program

and continues to remain sober. In February 2013, on his own initiative, he started outpatient counseling with a licensed social worker to determine the reasons for his excessive alcohol consumption in the past. He no longer consumes alcohol. He participated in AA for seven years in the past, then returned to consuming alcohol to excess. To prevent another relapse and to fully understand his problem, he sought individual counseling with a professional to address the reasons why he needed to consume alcohol. He continues with AA as it provides him with the additional support he needs to remain sober. He knows that he cannot drink alcohol, and he is committed to staying away from alcohol. Applicant has taken extraordinary steps on his own to address his alcohol addiction, which shows his commitment to his recovery. He is progressing in his recovery. He has mitigated the security concerns about his alcohol consumption under AG ¶¶ 23(b) and 23(d).

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

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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

AG ¶ 16 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(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, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

For AG ¶ 16(a) to apply, Applicant's omission must be deliberate. The Government established that Applicant omitted material facts from his February 2011 e-QIP when he failed to acknowledge his drug use and being fired from a job, and to list his 1995 and 1996 DUIs and his 2007 drug arrest. This information is material to the

evaluation of Applicant's trustworthiness and honesty. He denied that he intentionally falsified the answers on his e-QIP. He denies an intent to deceive the Government. When the allegation of falsification is controverted, the Government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred.<sup>23</sup>

At his hearing, Applicant acknowledged that he did not indicate that he had been fired from his job for misconduct because he was embarrassed about his wrongful conduct. He acknowledged that his "no" answers about his drug use were not true. Applicant explained that he thought the DUI arrests were civil and not criminal, that he did not need to list his 2003 arrest because it had been dismissed, and that he thought he had listed the 2007 arrest. Question 22e clearly asks if an applicant has EVER been charged with any offense related to alcohol or drugs. It is difficult to accept Applicant's claim that he believed that the 1995 and 1996 DUIs were civil matters. Applicant knew he had been arrested for the DUIs and twice for drug offenses. He provided incomplete and inaccurate information about his drug arrests in 2007 and 2003. In concluding that he intentionally falsified his E-QIP, I consider it relevant that he admitted providing inaccurate information about his drug use and his alcohol and drug arrests during his intake assessment in January 2012. Security concerns are established under AG ¶¶ 16(a) and 16(e).

The Personal Conduct guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶¶ 17(a) through ¶ 17(g), and the following are potentially applicable:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant voluntarily provided the information about his 1995 and 1996 DUI arrests and about his job termination during his March 2011 interview with the OPM investigator. Applicant specifically told the investigator that he had been fired, not laid off, from his job and explained the reasons. Applicant mitigated the security concerns

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<sup>23</sup>See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

related to his conduct as alleged in SOR ¶ 3a under AG ¶ 17(a). Likewise, by promptly informing the investigator about his DUIs, he mitigated the security concerns about his failure to list his 1995 and 1996 DUIs as alleged in SOR ¶ 3.b. However, because I find that he intentionally failed to list his drug arrest on his e-QIP, SOR ¶ 3.b is only partially mitigated under AG ¶ 17(a).

Applicant has raised significant security concerns by providing false and inaccurate evidence about his past alcohol and drug use to the Government. He was embarrassed by his behavior, but it does not justify providing false information. He admits his dishonesty and has set a goal to improve his ability to be forthright about his past conduct. He is working with a counselor on his goal. However, the evidence also shows that he was not completely candid about his substance abuse to an alcohol counselor in January 2012. At this time, he has failed to provide sufficient information to assure that he will always be honest and forthcoming. While he has taken positive steps, I still have a concern about his current ability to be forthright about his alcohol consumption and drug use. He has not fully mitigated all the security concerns about his personal conduct under AG ¶ 17.

### **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 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has a long history of alcohol abuse and marijuana use, which resulted in criminal arrests and convictions. Applicant remained sober for seven years, then returned to excessive alcohol consumption. Applicant has accepted that he is alcohol dependent and cannot drink again. On his own initiative, he sought treatment for his alcohol problems, and recently, he started counseling to understand the reasons that led to his alcohol addiction. His efforts to prevent further problems related to alcohol are commendable. He is focused on his recovery and his future well-being. His drug use is also in the past.

His pattern of dishonesty about his past alcohol and drug abuse is a separate issue from whether he is at risk of relapsing into substance abuse. In reviewing all the evidence in the record, I have a present concern about whether he can be counted on to be fully forthright about conduct that could reflect adversely on his judgment or may adversely affect his personal, professional, or community standing. He needs more time to demonstrate the good judgment, trustworthiness, and reliability that must be demanded of those persons with classified access.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his drug involvement and alcohol consumption under Guidelines H and G, but Applicant has not fully mitigated the security concerns about his personal conduct under Guideline E.

### **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 H:	FOR APPLICANT
Subparagraphs 1.a-1.d:	For Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraphs 2.a-2.g:	For Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	For Applicant
Subparagraphs 3.b-3.d:	Against Applicant

## **Conclusion**

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

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MARY E. HENRY  
Administrative Judge