DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
------	)	ISCR Case No. 11-12649
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: John R. Campbell, Esquire

07/26/2013

Decision

GALES, Robert Robinson, Administrative Judge:

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

Statement of the Case

On September 28, 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 unspecified dates, the Department of Defense (DOD) issued him two sets of interrogatories. He responded to both sets of interrogatories on November 1, 2012.[2] On November 29, 2012, the DOD issued a Statement of Reasons (SOR) to him, under Executive Order 10865, *Safeguarding Classified Information within Industry* (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*

[1] GE 1 (SF 86, dated September 28, 2010).

[2] GE 2 (Applicant's Answers to Interrogatories, dated November 1, 2012); GE 3 (Applicant's Answers to Interrogatories, dated November 1, 2012).

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) and G (Alcohol Consumption), 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 December 19, 2012. In a sworn statement, dated January 2, 2013, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on January 31, 2013. The case was assigned to another administrative judge on February 5, 2013, but reassigned to me on March 21, 2013. A Notice of Hearing was issued on June 7, 2013, and I convened the hearing, as scheduled, on June 26, 2013.[3]

During the hearing, 3 Government exhibits (GE 1 through GE 3) and 13 Applicant exhibits (AE A through AE M) were admitted into evidence without objection. Applicant testified. The transcript of the hearing (Tr.) was received on July 8, 2013. The record closed on July 8, 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.c.) and alcohol consumption (¶ 2.a.). 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 60-year-old employee of a defense contractor, and he is seeking to retain the secret security clearance which was granted to him in 1973.[4] He has been employed by the same defense contractor since October 2001, and currently serves as a senior systems analyst and programmer.[5] He was previously employed in similar positions by other defense contractors.[6] He served on active duty in an enlisted capacity

[3] Earlier efforts to schedule the hearing were unsuccessful because neither Applicant nor his attorney had access to any military facilities or video teleconference facilities, and an exception to the sequestration guidelines regarding travel at that time to conduct a hearing at the geographic location in which Applicant was located could not be justified. An exception was eventually approved.

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

[5] AE A (Curriculum Vitae, dated August 24, 2009), at 1; GE 1, *supra* note 1, at 13.

[6] AE A, *supra* note 5, at 1-3.

with the U.S. Army from March 1973 until he was honorably discharged in November 1976.[7]

Applicant received an Associate of Science degree in 1975; a Bachelor of Science degree in Biology in 1977; a Bachelor of Science degree in Business Administration in 1978; and a Master's of Business Administration degree in 1980.[8] Applicant was married in May 1973, and divorced in November 1974; married a second time in February 1979, and divorced in November 1999; married a third time in April 2001, and divorced in May 2005; and married a fourth time in September 2007, and divorced in August 2009.[9] He has two daughters, born in 1973 and 1984, and one son, born in 1982.[10]

Criminal Conduct & Alcohol Consumption

Applicant is an alcohol abuser whose use or possession of alcohol has resulted in three incidents involving the police and judicial authorities. Other than brief narratives of Applicant's alcohol consumption, very little evidence has been furnished about the specifics of the frequency, quantity, duration, or effects of such consumption. Applicant started consuming alcohol on a monthly basis at social events with members of his military unit when he was 21 years old.[11] Over the past ten years, he consumed beer, wine, and mixed drinks, generally on weekends, social events, and holiday parties, with friends.[12] Applicant estimated that it might take approximately six beers for him to become intoxicated. He denied ever drinking to intoxication or to the point of losing motor skills.[13]

(SOR ¶¶ 1.c. and 2.a.): In October 1995, when he was 42 years old, Applicant, accompanied by his then-13 year old son, was driving from their residence to a campsite about 50 or 60 miles away, when Applicant was stopped by the police for speeding. He knew he was speeding, but hoped to be at the campsite before it closed in order to join his brother and several friends. When an open bottle of vodka or wine cooler was found in the rear seat of the vehicle, Applicant was arrested and charged with driving under the influence (DUI), speeding, and possessing an open container in a dry county.[14] He was administered a breathalyzer test that registered 0.03 or 0.04, and

[7] GE 1, *supra* note 1, at 16; AE A, *supra* note 5, at 4; GE 3 (Report of Separation from Active Duty (DD Form 214), dated November 14, 1976); Tr. at 21-22. Although Applicant referred to himself as a "Regular Army Vietnam Era Veteran," he never served in Vietnam. *See*, AE A, *supra* note 5, at 4; Tr. at 39.

[8] AE A, *supra* note 5, at 4.

[9] GE 1, *supra* note 1, at 19-22.

[10] GE 1, *supra* note 1, at 25-26.

[11] GE 2 (Personal Subject Interview, dated November 1, 2010), at 2.

[12] GE 3, *supra* note 2, at 3.

[13] GE 2, *supra* note 11, at 2.

[14] Tr. at 42-46. The evidence as to the type of alcohol found is inconsistent as Applicant has referred to it differently during various stages of the investigation and hearing.

released after spending two hours in the city jail.[15] He was eventually found guilty of the open container and speeding charges and fined about $400.[16] The DUI charge was dismissed. Applicant acknowledged bringing alcohol to the campsite because the people he expected to camp with were all "drinkers."[17] He also stated to an investigator from the U.S. Office of Personnel Management (OPM) that the open bottle belonged to another person who had previously been in the vehicle.[18] Applicant acknowledged having consumed one wine cooler during the day before he departed for the campsite,[19] and the breathalyzer results confirm his recent consumption of alcohol. At that point in his life, Applicant did not believe he had a problem with alcohol.[20]

(SOR ¶¶ 1.b. and 2.a.): In the evening of September 2010, when he was 57 years old, Applicant attempted to drive onto a military reservation in order to attend an Oktoberfest celebration. Upon approaching the gate, a security guard smelled alcohol on Applicant's breath, and directed him to pull over. Applicant was observed as emitting the odor of alcohol, slurred speech, glassy and bloodshot eyes, unsteady balance, and difficulty in following instructions.[21] Three field sobriety tests were administered, but when Applicant was asked to undergo a breathalyzer test, he refused to do so.[22] He was arrested and charged with DUI, spent the night with the provost marshal, and was released the following day.[23] Nearly one year later, after a two-day trial before a jury in September 2011, in which he entered a plea of not guilty, Applicant was convicted, and sentenced to a fine of $600, a special assessment of $25, and two year's supervised probation.[24] One of the provisions of his probation was that he not commit another federal, state, or local crime.[25] An additional provision was added to his sentence on September 28, 2011, when Applicant was required to attend and complete a DUI

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[15] GE 2, *supra* note 11, at 2; Tr. at 45, 47-48.

[16] GE 2, *supra* note 11, at 2; Tr. at 45; Applicant's Answer to the SOR, at 1.

[17] Tr. at 46.

[18] GE 2, *supra* note 11, at 2.

[19] Tr. at 43; GE 2, *supra* note 2, at 1.

[20] Tr. at 46.

[21] GE 3 (Official Notice of Intended Suspension of Driving Privileges and Affidavit, dated September 18, 2010).

[22] GE 2, *supra* note 11, at 2; Tr. at 50-51.

[23] GE 2, *supra* note 11, at 2.

[24] GE 3 (Court Documents, various dates), attached to Applicant's Answers to the Interrogatories; Tr. at 52-53.

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

school.[26] Applicant subsequently acknowledged having consumed one vodka cranberry drink before he departed for the military facility.[27]

(SOR ¶¶ 1.a. and 2.a.): Less than one year after he was placed on supervised probation, in June 2012, at about 9 o'clock in the evening, Applicant stopped at a gentleman's club where he consumed what he described as two or three wine coolers.[28] He subsequently continued driving home, and in an effort to avoid a dog that ran onto the road, Applicant swerved his truck and ran it into a ditch by the side of the road.[29] After taking a field sobriety test he was administered a blood alcohol test which registered 0.17.[30] He was arrested and charged with DUI.[31] Applicant reported the incident to his probation officer who in turn notified the court. As a result, on September 13, 2012, Applicant's probation from his 2010 DUI was modified, and it was extended two years from September 5, 2012; he was ordered to serve two days in the custody of the U.S. Marshals Service; and was ordered to participate in the Court Intervention Program (CIP) under the supervision of the U.S. Probation Office.[32] Under the CIP, as acknowledged by Applicant, his attorney, his probation officer and the assistant United States Attorney, Applicant was required to stay free of drugs and alcohol.[33] Nevertheless, after he commenced the weekly 12-step Moral Reconation Therapy program (MRT) under the CIP, Applicant continued to consume alcohol, albeit for a relatively short period.[34] For example, on the way home from therapy during the first or second week of October 2012, he purchased a bottle of wine and went home and consumed it.[35]

As of October 27, 2012, Applicant had completed 2 steps of the 12-step MRT and had undergone an assessment by a counselor who is both a licensed professional counselor and a national certified counselor.[36] He completed the MRT on January 12, 2013.[37] Applicant's counselor wrote a letter noting that Applicant had "progressed nicely" while in the MRT, and that he had exhibited "true remorse, accountability,

[26] GE 3, *supra* note 24.

[27] Tr. at 50.

[28] Tr. at 57.

[29] Tr. at 57-58.

[30] Tr. at 58.

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

[32] GE 3, *supra* note 24.

[33] GE 3 (Court Intervention Program, ordered September 5, 2012).

[34] Tr. at 23.

[35] Tr. at 41.

[36] GE 3 (Counseling Records, various dates).

[37] AE E (Certificate, dated January 12, 2013).

awareness, acceptance, and humility." Applicant had also passed all breathalyzer tests that had been administered.[38] No evaluation, assessment, or diagnosis was entered into evidence. While the counseling handbook describes the various options available in the counseling programs, there are no clinical, treatment, or counseling notes in evidence describing Applicant's actual therapy sessions or overall prognosis.

Applicant acknowledged that he consumed alcohol "most all of [his] life" and that he abused alcohol.[39] He used to go to clubs.[40] During the period between 1995 and 2010, there were times when he was drinking and driving, and was probably at risk of being arrested for DUI.[41] He also attributes his alcohol abuse to personal issues involving troublesome marriages and other relationships.[42] Now, however, since starting the MRT, he realized he needed to make better choices and come to grips with his problem, and he no longer goes to clubs or consumes alcohol, has no alcohol in his residence, and has no plans to resume drinking alcohol.[43] Applicant contends that he has been abstinent since October 2012, and there is no evidence to the contrary. Upon completion of the MRT, it was Applicant's intention to continue with a weekly after-care program, at least through September 2013, when he anticipates his probation will be terminated.[44]

Character References and Work Performance

Applicant's work performance appraisals from his employers generally reflected an individual whose "performance is exceptional in all areas and is recognizable as being far superior to others;"[45] whose performance "consistently exceeds job requirements in all key areas;"[46] or whose performance "demonstrates high level of competency; achieves results beyond expectations."[47] He was selected as an employee of the quarter in January 1998.[48] Various program managers, supervisors, and military "customers" were effusive in praise for Applicant's efforts, significant contributions, excellent work ethic, dedication, organization, technical expertise, personal leadership,

[38] AE E (Letter, dated January 2, 2013 (sic)).

[39] Tr. at 46.

[40] Tr. at 24.

[41] Tr. at 49.

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

[43] Tr. at 23-27, 47.

[44] Tr. at 25, 60-61; Applicant's Answer to the SOR, at 3.

[45] AE H (Performance Appraisal, dated December 5, 1996).

[46] AE D (Performance Appraisal, dated April 29, 1998).

[47] AE C (Annual Evaluation, dated December 4, 2012).

[48] AE D, *supra* note 46, at 2.

insight, and efficiency.[49] His current program manager, an individual who has known and worked with Applicant for over ten years, noted that Applicant has "never exhibited any evidence of impairment or lack of good judgment on the job."[50]

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."[51] 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."[52]

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."[53] 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

[49] AE B (Letter of Commendation, dated March 31, 2003); AE F (Letter, dated July 24, 2000); AE K (Letters of Commendation and Appreciation, various dates); AE L (Recommendation, dated October 20, 1994); AE M (Promotion Memorandum, dated May 28, 1992).

[50] AE G (Character Reference, dated January 2, 2013).

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

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

[53] "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).

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.[54]

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours 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."[55]

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."[56] 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. Similarly, under AG ¶ 31(d), if the *individual is currently on parole or probation*, security concerns may be raised. In addition, a *violation of parole or probation, or failure to*

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

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

[56] *See* Exec. Or. 10865 § 7.

complete a court-mandated rehabilitation program, is potentially disqualifying under AG ¶ 31(e). Applicant's history of criminal conduct consists of three arrests and convictions for alcohol-related incidents, and a violation of probation, and he is currently on probation. AG ¶¶ 31(a), 31(d), and 31(e), have 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, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.*

AG ¶ 32(a) does not apply. AG ¶ 32(d) only minimally applies. Applicant's criminal conduct commenced in 1995 and continued until June 2012, a little over one year ago. Following each incident, Applicant was involved in both the police and court systems. He spent brief periods in jail, paid fines, attended education classes, underwent therapy, and was placed on probation. In June 2012, despite being on probation from the 2010 DUI, Applicant violated the terms of the probation and was involved in another alcohol-related incident. After his probation was extended because of that violation, and aware that he was not to consume alcohol, he did so again. No type of punishment seemed to work. Nevertheless, there is some evidence of successful rehabilitation which essentially started after Applicant was enrolled in the MRT. There has been no further SOR-alleged criminal conduct during the past 12-month period. A person should not be held forever accountable for misconduct from the past, especially if there is 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 government contractors. Nevertheless, in light of the multi-year period of criminal activity, it is simply too brief a period to generate enough confidence to conclude that there is a successful rehabilitation.

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). Similarly, a *diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence* is of security significance under AG ¶ 22(d). Additionally, an *evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program* is potentially disqualifying under AG ¶ 22(e). Also, AG ¶ 22(g) may apply if there is a *failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence*. AG ¶ 22(a) has been established by Applicant's two DUI convictions and his open container conviction; AG ¶ 22(c) has been established, because Applicant repeatedly consumed alcohol to the point of impaired judgment; and AG ¶ 22(g) has been established by Applicant's continued use of alcohol in violation of his probation provisions. AG ¶¶ 22(d) and 22(e) have not been established as the record is silent regarding a diagnosis and an evaluation.

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. Although he denied having an alcohol problem in the past, Applicant now concedes that he has an alcohol problem, and he needs to stay away from alcohol. He no longer goes to clubs or consumes alcohol, has no alcohol in his residence, and has no plans to resume drinking alcohol. Applicant attributes his alcohol abuse to personal issues involving troublesome marriages and other relationships. Applicant contends that he has been abstinent for only nine months, since October 2012, and there is no evidence to the contrary. He completed the MRT and is continuing with a weekly after-care program, at least through September 2013, when he anticipates his probation will be terminated.

Applicant has consistently minimized the significance of alcohol in his life. He estimated that it might take approximately six beers for him to become intoxicated. He denied ever drinking to intoxication or to the point of losing motor skills. Yet, in September 2010, after consuming only one vodka cranberry drink before he departed for the military facility, Applicant was observed as emitting the odor of alcohol, slurred speech, glassy and bloodshot eyes, unsteady balance, and difficulty in following instructions. In June 2012, after consuming only two or three wine coolers, he was administered a blood alcohol test which registered 0.17. It appears that Applicant has minimized the quantity of alcohol consumed on each occasion. After careful consideration of the Appeal Board's jurisprudence on alcohol consumption, I conclude Applicant's continued alcohol consumption after his alcohol-related convictions, as well

as while he was on probation, and his minimizing his alcohol problem, all indicate 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. While his abstinence should be viewed favorably, and he should be encouraged to continue his abstinence and aftercare treatment, it is simply too soon after his most recent consumption of alcohol to conclude that his alcohol problem has been put behind him and will not recur.

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 J and G in my analysis below.

There is substantial evidence in favor of mitigating Applicant's conduct. Applicant has been employed by the same defense contractor since October 2001, and has had a secret security clearance since 1973. Applicant 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 government contractors. He is well educated, and is a respected member of his employer's workforce. He successfully completed MRT, and is currently attending an aftercare program. Applicant now concedes that he has an alcohol problem. He has been abstinent since October 2012.

The disqualifying evidence under the whole-person concept is more substantial. Applicant is an alcohol abuser who has two DUI convictions, and an open container conviction between 1995 and 2012. He spent brief periods in jail, paid fines, attended education classes, underwent therapy, and was placed on probation. In June 2012, despite being on probation from the 2010 DUI, Applicant violated the terms of the probation and was involved in another alcohol-related incident. After his probation was extended because of that violation, and aware that he was not to consume alcohol, he did so again. Applicant's probation is currently scheduled to continue until September 2014. After a lengthy period of alcohol consumption, Applicant has been abstinent for

only nine months. He continues to minimize the quantity of alcohol consumed in the past.

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.[57] 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 failed to mitigate the criminal conduct and alcohol consumption 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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

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

[57] *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).