



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



In the matter of:)
)
) ISCR Case No. 14-06771
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: Troy L. Nussbaum, Esq.

11/22/2016

Decision

Harvey, Mark, Administrative Judge:

Applicant has a lengthy history of alcohol consumption, and at times the magnitude of his alcohol consumption was excessive. He abstained from alcohol consumption for 4½ years and he promised to continue to abstain from alcohol consumption. Applicant made four security-related false statements from May 24, 2012, to July 28, 2015, about his history of alcohol consumption. Alcohol consumption security concerns are mitigated; however, personal conduct security concerns are not mitigated. Access to classified information is denied.

History of the Case

On May 24, 2012, Applicant completed and signed an Electronic Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On March 28, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a statement of reasons (SOR) to Applicant pursuant to Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry*; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), which became effective on September 1, 2006.

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance

for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. (Hearing Exhibit (HE) 2) Specifically, the SOR set forth security concerns arising under Guidelines G (alcohol consumption) and E (personal conduct).

On April 22, 2016, Applicant responded to the SOR. On May 18, 2016, Department Counsel was ready to proceed. On July 18, 2016, the case was assigned to me. On August 11, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for September 7, 2016. (HE 1) Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered four exhibits; Applicant offered six exhibits; and all exhibits were admitted into evidence without objection. (Transcript (Tr.) 13-15; Government Exhibits (GE) 1-4; Applicant Exhibits (AE) A-F) Department Counsel also offered a letter indicating discovery was provided to Applicant, which was admitted without objection. (Tr. 12; HE 4) On September 15, 2016, DOHA received a copy of the transcript of the hearing.

Findings of Fact

In Applicant's SOR response, he admitted the SOR allegation in ¶ 1.c. He admitted some facts in each of the other SOR allegations, and he denied other facts in each of the SOR allegations. He also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact.

Applicant is a 59-year-old employee of a defense contractor. (GE 1) He worked as a senior engineer on advanced technologies for more than 30 years and for his current employer more than 10 years. (Tr. 18, 20, 113; GE 1) In 1984, Applicant graduated from a large U.S. university, and he received a bachelor's of science degree in electrical engineering. (Tr. 18, GE 1) In 1986, Applicant married, and in 1989, he divorced. (Tr. 112) He does not have any children. (Tr. 112) He never served in the U.S. military. (Tr. 112) He has held a security clearance since 1984, and there is no evidence of security violations. (Tr. 19)

Alcohol Consumption

The SOR alleges: in 1989 or 1990, Applicant received alcohol treatment and was diagnosed as alcohol dependent (¶ 1.a); in 1996, he relapsed and resumed his alcohol consumption (¶ 1.b); between 2007 and March 2012, he drank alcohol throughout the day including during work days (¶ 1.c); and Applicant's supervisor confronted Applicant about his alcohol consumption and allowed Applicant to take time off from work to attend an alcohol-treatment program; however, Applicant did not attend an alcohol-treatment program (¶ 1.d).

Applicant has consumed alcohol with lengthy periods of sobriety for more than 30 years. (Tr. 20-21) In the 1980s, he drank about a half-gallon of vodka on a weekend day and a fifth of vodka almost every night during the week. (Tr. 109; GE 3 at 2) He had

memory blackouts from his alcohol consumption. (Tr. 110) In 1984, Applicant consumed more than 20 drinks in a 12-hour period and drove his vehicle. (Tr. 62; GE 3 at 1) He was arrested for driving under the influence of alcohol (DUI). (Tr. 62; GE 3 at 1) He refused a breathalyzer test. (GE 3 at 2) He pleaded guilty to DUI; he received probation before judgment; and he was sentenced to a fine and probation for 12 months. (GE 1; GE 3 at 2)

In 1989, Applicant was abusing codeine and excessively drinking alcohol, and the police arrested him for attempting to purchase narcotics. (Tr. 21, 62; GE 1) The last time he abused an illegal drug was in 1989. (Tr. 25) In 1989 or 1990, Applicant came to work hungover and smelling of alcohol, and his company suggested or requested that he obtain treatment for substance abuse. (Tr. 27-28) He received 30 days of detoxification. (Tr. 21) After his inpatient treatment, he went to Alcoholics Anonymous (AA) meetings. (Tr. 110) He did not recall being diagnosed as alcohol dependent. (Tr. 30) The inpatient treatment records and diagnosis from the program are not part of the record evidence. Applicant was sober for one year. In 1990, he was under stress, and he resumed his alcohol consumption, and he became intoxicated. (Tr. 21, 63-65) He recognized the negative effects of excessive alcohol consumption, and he resumed sobriety for several years. (Tr. 22) He said he went to AA meetings "maybe once a week . . . until sometime in the 2000's." (Tr. 64) He stopped routinely attending AA meetings around 2005; however, from 2005 to 2012, he occasionally attended AA meetings. (Tr. 95) He resumed frequent AA attendance on March 15, 2012. (Tr. 95)

In 2002, Applicant's dog died, and Applicant drank alcohol to intoxication. (Tr. 22, 65, 94) Applicant gradually increased his alcohol consumption, and by 2008, he was drinking alcohol every weekend. (Tr. 23) He continued to increase the frequency of his alcohol consumption, and by 2011 or 2012, he was drinking alcohol every day. (Tr. 23, 70-71) Sometimes he started drinking alcohol shortly after waking in the morning. (Tr. 70) When he drank alcohol during the duty day, it was during lunch or after he was done working for the day. (Tr. 38) He denied that: he was drunk at work; he drank alcohol at the office; and he drove to the office after drinking. (Tr. 38-39, 99-100) Later in his hearing, he said, he could have been under the influence of alcohol, but not intoxicated, while he was working at home in the 2008 to 2012 timeframe. (Tr. 72, 99-100) He conceded that he consumed alcohol while working at home. (Tr. 38-39)

On March 14, 2012, Applicant's employer came to him and advised him that one of their customers did not want Applicant working on their project because of his alcohol consumption. (Tr. 23, 75, 118, 127) In March 2012, Applicant's supervisor noticed the smell of alcohol on Applicant's breath. (Tr. 118, 126) He confronted Applicant about consuming alcohol, and Applicant confessed that he had been drinking. (Tr. 118, 126-128) Applicant's supervisor did not believe Applicant was impaired or intoxicated in the office, or that he was drinking alcohol in the office. (Tr. 125, 130, 134, 137)

On March 14, 2012, Applicant told his supervisor that he would take care of his problem. (Tr. 120, 129) His supervisor understood from a March 14, 2012 email from Applicant that he sought inpatient treatment and intended to go to inpatient treatment. (Tr. 120-123, 129-131; GE 2 at 49) When Applicant returned to work, he did not say

whether or not he received inpatient treatment, and sometime probably in 2014, Applicant said he went to AA meetings instead of the inpatient treatment. (Tr. 122-123, 132-133) It was irrelevant to Applicant's pay whether he went to AA meetings or inpatient alcohol treatment. (Tr. 139) Applicant's supervisor believed Applicant has been sober since March 15, 2012, and Applicant's work was outstanding after March 2012. (Tr. 122-124) The only requirement for Applicant to return to work was for him to end his alcohol consumption.

Applicant said he terminated his alcohol consumption on March 15, 2012, and he has not consumed alcohol after March 15, 2012. (Tr. 23-24, 40, 57) He does not intend to consume alcohol in the future. (Tr. 57) He does not keep alcohol in his house; his girlfriend does not drink alcohol; and his family, friends, and employer support his sobriety. (Tr. 57-58; AE E)

Applicant conceded that he could not handle any alcohol consumption. (Tr. 61) He was not able to drink responsibly or in moderation. (Tr. 61) He used AA to reinforce his commitment not to consume alcohol. (Tr. 61)

Applicant provided a written statement of his intention "never to abuse alcohol in the future and consent[ed] to automatic revocation of his security clearance should there be any violation with regard to alcohol use." (Tr. 59; AE D) Applicant explained that he understood this commitment to mean that if he resumed alcohol consumption his security clearance would be revoked. (Tr. 59-60)

A licensed psychologist described Applicant's history of alcohol consumption as indicated in the SOR and related by Applicant; however, it did not detail the magnitude of his alcohol consumption in the 1980s. (AE A) The psychologist diagnosed Applicant with "Alcohol Use Disorder, in remission with four years sobriety," and he concluded there was a "low risk of relapse." (AE A at 9, 11) A licensed clinical alcohol and drug counselor said he had a low risk of relapse and did not recommend any education or treatment for his alcohol use. (AE B) Applicant's AA sponsor described Applicant's active participation in AA and considered him to be trustworthy, diligent, loyal, and honest. (AE C)

Personal Conduct

Applicant intentionally failed to disclose his arrest in 1989 for attempted possession of a narcotic on his 2002 SCA because he was worried about losing his employment if he disclosed the information; however, this falsification of his SCA was not listed in his SOR.¹ (Tr. 62, 97-98; GE 1 at 45-46; GE 3 at 4)

¹Applicant's SOR does not allege that in 1984, he drove his vehicle while intoxicated; in 1989, he was arrested for attempted possession of a narcotic; in 2002, he intentionally provided false information in his 2002 SCA about his arrest for attempted possession of a narcotic, and he was not truthful and candid at his hearing about his state of mind when he made four security-related false statements from May 24, 2012 to July 28, 2015 about his history of alcohol consumption. 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:

Applicant's Four Statements Denying Alcohol Consumption from 1996 to 2002

The SOR alleges that Applicant made four false security-related statements from May 24, 2012, to July 28, 2015, about his alcohol consumption from 1996 to 2002 as follows: in his May 24, 2012 SCA (¶ 2.b); during his June 25, 2012 Office of Personnel Management (OPM) personal subject interview (PSI) (¶ 2.c); during his March 25, 2014 OPM PSI (¶ 2.e); and in his July 28, 2015 response to DOHA interrogatories (¶ 2.f).

On March 20, 2002, Applicant provided a handwritten sworn statement to a Defense Security Service representative. Applicant stated that from 1991 to 2002, he did not consume alcohol. (Tr. 31; GE 3) He described his alcohol use between 1996 and 2002 as follows:

I purchased a ½ pint of vodka on the day I moved into a new house . . . with my girlfriend in 1991. Other than this I did not consume alcohol again until 1996. Between 1996 and now I have consumed alcohol in very limited amounts in certain social settings. I have dinners with my friends each week and have probably consumed about three beers or less per month since 1996. I do not believe I have an alcohol problem at the present time. (Tr. 22, 24, 32; GE 3 at 6)

In Applicant's May 24, 2012 SCA, he said he was sober for 17 years from 1990 to about 2007 (indicating in his SCA that he resumed alcohol consumption five years before completing his SCA). (GE 1 at 35, 39-41; SOR ¶ 2.b) On June 25, 2012, Applicant told an OPM investigator that he stopped drinking after completing the treatment program in 1990 "and stayed completely sober from drugs and alcohol until 2007." (GE 2 at 6; SOR ¶ 2.c) On March 25, 2014, Applicant told an OPM investigator that from approximately 1990 to 2007, "he abstained from alcohol and drugs completely." (Tr. 68; GE 2 at 14; SOR ¶ 2.e) In Applicant's July 28, 2015 response to DOHA interrogatories, he verified the accuracy of the OPM interviews of June 25, 2012, and March 25, 2014, and he reiterated his claim that he had 17 years of sobriety. (GE 2 at 21, 25, 28) When he completed his DOHA interrogatories, he made changes to the OPM interview; however, he did not change his statement that he was completely abstinent from alcohol consumption from 1990 to 2007. (Tr. 69) He described his failure to change the OPM summary as "my oversight." (Tr. 69)

(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. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). Applicant's non-SOR conduct will not be considered for disqualification purposes, and consideration will be limited to the five circumstances outlined by the appeal board.

Applicant said he did not remember drinking from 1996 to 2002 until he reviewed his March 20, 2002 statement, which refreshed his recollection about occasionally consuming alcohol from 1996 to 2002. (Tr. 35-36) Later he said:

Well, I was thinking it was in terms of I didn't get drunk. I wasn't a drinking person as like regularly going out and drinking. I had these isolated incidents which you just mentioned. But I felt like for the most part I was sober every day, you know. . . . Yes, there could be maybe six days that you can find over those 17 years [1990 to 2007] . . . when I – or three days or where I was intoxicated then. (Tr. 65-66)

Because Applicant continued to occasionally drink alcohol in the 1990s, his AA sober date moved dozens of times, and he just took a “one day badge” to show the period of sobriety. (Tr. 66, 99) He explained the discrepancy about forgetting that he consumed alcohol in the 1990s as follows: “How I forgot them, no, I knew I was drinking then, but I just didn't realize that they were in that period in '95 to -- '96 to '99. I thought they started in 2002.” From 1996 to 2002, Applicant said the most that he drank in any month was three beers, and there were some months that he did not drink any alcohol. (Tr. 69-70) He said three or four times a year, he would gather with friends and drink a beer or two. (Tr. 70) Later he said he drank about six beers a year for those six years. (Tr. 94)

Applicant contended that his failure to provide accurate information as alleged in SOR ¶¶ 2.b, 2.c, 2.e, and 2.f, was due to a memory lapse and not deliberate and intentional. (Tr. 36-37; AE F)

Applicant's Statements to his Employer about Inpatient Alcohol Treatment in March 2012

The SOR alleges in ¶ 2.a that in March 2012, Applicant falsely told his employer that he attended a five-day alcohol-treatment program.

On March 14, 2012, Applicant's employer confronted him about his alcohol consumption and provided him an insurance pamphlet about health care treatment for addictions and alcohol treatment. (Tr. 40-43, 76, 84, 89; SOR ¶ 1.d; GE 2 at 35) Applicant called the number in the pamphlet and the insurance company advised him that the insurance company did not recommend specific programs. (Tr. 84) He had to find the program he wished to attend, and then the program was supposed to contact the insurance company for a coverage decision. (Tr. 84) Applicant did some research during the early afternoon on March 14, 2012, and he checked with a facility and thought he would be able to enroll as an inpatient for five days. (Tr. 42-45, 76-79; GE 2 at 51) On March 14, 2012, at 5:27 PM, he told his supervisor in an email that he would not be available to assist on a project, until he would be out of inpatient treatment on the following Tuesday (six days later). (Tr. 50-51, 79; GE 2 at 49) After he told his supervisor he planned to enroll in inpatient treatment, on March 14, 2012, he learned that he was unable to enroll in a five-day detoxification program, and instead, he elected to attend AA meetings. (Tr. 42-46, 77-78) He attended multiple AA meetings each day

over the period March 15-19, 2012 (He was off from work those five days). (Tr. 43, 47, 52) He never told his supervisor or anyone else at work that he actually attended an inpatient treatment program in March 2012. (Tr. 47, 52, 82-85) He told his supervisor that he attended AA meetings over the period March 15-19, 2012. (Tr. 52) He continued to attend AA meetings after March 2012. (Tr. 47)

Applicant denied that he was told his clearance was revoked until he completed inpatient treatment. (Tr. 40-43, 82-85) In order to get his clearance reinstated, Applicant told his supervisor that he was sober, and he was attending AA meetings. (Tr. 86)

Applicant's Statements about Inpatient Alcohol Treatment in March 2012 to an OPM Investigator

The SOR alleges in ¶ 2.d and Applicant admitted that he that falsely told an OPM investigator on March 25, 2014, that he attended inpatient treatment at a specific treatment center in March 2012. Applicant said he became flustered and panicky during the OPM interview when he was asked about inpatient treatment. (Tr. 54-55) He made up the name of a treatment center and lied about the receipt of inpatient alcohol treatment. (Tr. 55-56) The same day that he lied to the OPM investigator, Applicant called the investigator and told her that he lied about receiving inpatient treatment in 2012. (Tr. 55-56) He said this was the only instance he intentionally provided false information. (Tr. 57) Later in his hearing, he acknowledged that he deliberately provided false information on his 2002 SCA when he denied his arrest for attempted possession of drugs. (Tr. 62-63, 97-98)

Character Evidence

Applicant's supervisor described his work performance as outstanding with an excellent reputation among his peers and customers at the personal appearance and in a written statement. (Tr. 117, 124; AE E) He recommended that Applicant retain his security clearance. (Tr. 126)

In addition to the statement from his supervisor, Applicant provided seven character letters from friends, his facility security officer, and coworkers some of whom have known him for decades. (AE E) The general sense of their statements is that Applicant is honest, diligent, reliable, responsible, loyal, professional, competent, and dedicated. (AE E)

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." *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

applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. 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." See Exec. Or. 10865 § 7. Thus, nothing should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about 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

Alcohol Consumption

AG ¶ 21 articulates the 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 concern and may be disqualifying in this case. AG ¶¶ 22(a) through 22(g) provides:

(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;²

²In 1952, the American Psychiatric Association (APA) published the first of a series of Diagnostic and Statistical Manuals of Mental Disorders. In 2000, the APA published the DSM–IV–TR. The criteria for “alcohol abuse” and “alcohol dependence” in AG ¶ 22 are drawn from the DSM-IV-TR, which was in effect when the Adjudicative Guidelines were issued in 2006. In May 2013, the APA issued the 5th edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM–5). The criteria in DSM-IV-TR for alcohol dependence and in DSM-5 for alcohol use disorder (AUD) are objective, well established, and rely primarily on self-reports and descriptions. DSM–5 integrates the two DSM–IV disorders, alcohol abuse and alcohol dependence, into a single disorder called alcohol use disorder (AUD) with mild, moderate, and severe sub-classifications. DSM-IV-TR and DSM-5 are used throughout the medical and legal communities to determine alcohol dependence and AUD severe, which have the same criteria. AUD-moderate overlaps with both alcohol abuse and alcohol dependence. The DSM-5 notes that, “early remission from a DSM-5 substance use disorder is defined as at least 3 but less than 12 months without substance use disorder criteria (except craving), and sustained remission is defined as at least 12 months without criteria (except craving).” Additionally the new DSM-5 includes “in a controlled environment” and “on maintenance therapy” as the situation warrants. The alcohol consumption guideline does not incorporate DSM remission criteria and leaves mitigation to a case-by-case determination. See National Institute of Health, National Institute on Alcohol Abuse and Alcoholism website, “Alcohol Use Disorder: A Comparison Between DSM–IV and DSM–5 <http://pubs.niaaa.nih.gov/publications/dsmfactsheet/dsmfact.pdf>. (HE 4) See also American Psychiatric Association, “Highlights of Changes from DSM-IV-TR to

(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(d) through 22(g) do not apply. There was no evidence of: alcohol impairment or intoxication at work; an alcohol dependence diagnosis; relapse after a diagnosis of alcohol dependence; and failure to follow any court orders.

AG ¶¶ 22(a), 22(b), and 22(c) apply. In 1984, Applicant was arrested for and pleaded guilty to DUI. He engaged in binge alcohol consumption to the extent of impaired judgment.³ He admitted that he consumed alcohol while he was working at home.

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

DSM-5," at 15, (Substance Abuse Disorders), <http://www.dsm5.org/documents/changes%20from%20dsm-iv-tr%20to%20dsm-5.pdf>. (HE 5)

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>.

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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶ 23(b) applies. On March 15, 2012, Applicant ended his alcohol consumption, and he attended numerous AA meetings each week to reinforce his abstinence. Applicant is credited with continuing to attend AA meetings after his security clearance was suspended, and his security clearance was reinstated.

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 substantial alcohol abuse 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).

I have carefully considered the Appeal Board's jurisprudence on alcohol consumption, Applicant's history of alcohol consumption, his six-year period of alcohol abstinence from 1991 to 1996, his 4½ years of alcohol abstinence from March 15, 2012, to his hearing on September 7, 2016, support from his friends, coworkers, and AA sponsor, and his sincere commitment to continued alcohol abstinence. He has a "sustained period of remission" under DSM-5 because he has more than 12 months of abstinence. See note 2, *supra*. He has not had any alcohol-related incidents involving the police, courts, or at his employment since March 14, 2012. Applicant has eliminated doubts about his current reliability, trustworthiness, and good judgment in relation to his alcohol consumption. Alcohol consumption security concerns are mitigated.

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 two conditions that could raise a security concern and may be disqualifying in this case:

(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;⁴ and

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

Applicant made four security-related false statements from May 24, 2012, to July 28, 2015, when he claimed that he did not consume alcohol from 1990 until 2007 because he periodically drank alcohol from 1996 and March 2002. The four false statements were made as follows: in his May 24, 2012 SCA (SOR ¶ 2.b); during his June 25, 2012 OPM PSI (SOR ¶ 2.c); during his March 25, 2014 OPM PSI (SOR ¶ 2.e); and in his July 28, 2015 response to DOHA interrogatories (SOR ¶ 2.f). AG ¶¶ 16(a) and 16(b) are established in regard to SOR ¶¶ 2.b, 2.c, 2.e, and 2.f.

The SOR alleges that in March 2012, he provided false information to his employer that he attended a five-day alcohol-treatment program (¶ 2.a). This allegation

⁴The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

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

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

is not substantiated. Applicant expressed his intention to attend the treatment program; however, he was not permitted to enroll for a five-day treatment program, and he elected not to enroll. He did not lie to his employer about attendance in the five-day treatment program.

SOR ¶ 2.d alleges and the record establishes that he falsely told an OPM investigator on March 25, 2014, that he attended inpatient treatment at a specific treatment center in March 2012. AG ¶ 16(b) applies to SOR ¶ 2.d.

AG ¶ 17 provides conditions that could mitigate security concerns including:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) 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;

(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;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

AG ¶ 17(a) applies to SOR ¶ 2.d. The evening after Applicant lied to the OPM investigator on March 25, 2014, about attendance at an inpatient treatment at a specific treatment center in March 2012, he told the OPM investigator that he had lied, and he provided correct information.

None of the mitigating conditions apply to the allegations in SOR ¶¶ 2.b, 2.c, 2.e, and 2.f. Applicant admitted that the statements made on his 2012 SCA, during his 2012 and 2014 OPM PSIs, and his 2015 DOHA interrogatories about not consuming alcohol from 1996 to 2007 were incorrect, and he did in fact use alcohol on several occasions during that time period. He claimed his incorrect statements were due to memory lapses and not deliberate lies. Alternatively, he claimed that his alcohol consumption was so minimal that it did not show a lack of sobriety, or words to that effect. His claims of memory lapses or that his false statements were unintentional are not credible. He attended AA meetings from 1996 to 2007, and he had to repeatedly recalculate his sobriety date. Moreover forgetting about alcohol consumption over such a long period is not credible, especially when the issue of alcohol consumption has had such a profound influence on his life over his 30-plus year history of alcohol consumption.

The protection of national security relies upon the honesty of security clearance holders, and their willingness to self-report information, even when disclosure reflects poorly on the security clearance holder. Personal conduct security concerns are not mitigated.

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 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.

Applicant is a 59-year-old employee of a defense contractor, who has worked as a senior engineer on advanced technologies for more than 30 years and for his current employer more than 10 years. In 1984, Applicant graduated from a large U.S. university, and he received a bachelor's of science degree in electrical engineering. Applicant is credited with 4½ years of abstinence from alcohol consumption and with promising to continue his sobriety. The general sense of Applicant's eight character statements is that Applicant is honest, diligent, reliable, responsible, loyal, professional, competent,

and dedicated. Their statements support approval of his security clearance. He has held a security clearance since 1984. There are no allegations of violations of security rules.

The factors weighing against continuation of his security clearance are more substantial than the mitigating circumstances. Applicant made four security-related false statements from May 24, 2012, to July 28, 2015. He falsely claimed in his SCA, his two OPM PSIs, and in his DOHA interrogatories that he did not consume alcohol from 1990 until 2007. He periodically drank alcohol from 1996 and March 2002. His four false statements were made deliberately and with intent to deceive security officials. His hearing statement that he did not deliberately make incorrect statements or that he forgot about his alcohol consumption was not credible because of his attendance at AA meetings and his concession that he moved his sober date dozens of times, and he just took a "one day badge." His false statements are serious and relatively recent.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Alcohol consumption security concerns are mitigated; however, personal conduct security concerns are not mitigated.

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 through 1.d:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraphs 2.b and 2.c:	Against Applicant
Subparagraph 2.d:	For Applicant
Subparagraphs 2.e and 2.f:	Against Applicant
Subparagraph 2.g:	For Applicant

Conclusion

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

Mark W. Harvey
Administrative Judge