



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



In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 16-00512
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel  
For Applicant: *Pro se*

01/18/2018

**Decision**

HESS, Stephanie C., Administrative Judge:

This case involves security concerns raised under Guideline E (Personal Conduct), Guideline G (Alcohol Consumption), Guideline H (Drug Involvement and Substance Misuse), and Guideline J (Criminal Conduct). Applicant mitigated the security concerns raised by his history of alcohol abuse and marijuana use. Applicant's failure to appropriately list derogatory information on his security clearance application was unintentional, and his 2012 termination from employment is mitigated by time. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (e-QIP) on August 14, 2014. On June 14, 2016, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guidelines E, G, H, and J. The DOD acted under Executive Order (E.O.) 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 (AG) implemented by DOD on September 1, 2006.

Applicant answered the SOR June 28, 2016, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on August 17, 2016. On August 19, 2016, a complete copy of the file of relevant material (FORM,) which included Government Exhibits (GX) 1 through 3, was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on August 26, 2016, and his Response was received by the Defense Office of Hearings and Appeals (DOHA) within the allotted 30 days and admitted without objection. The case was assigned to me on May 3, 2017. On November 13, 2017, I reopened the record to allow both parties to submit any additional evidence. Applicant submitted additional documents which I admitted into the record collectively as Applicant's Exhibit (AX) A, without objection.

The SOR was issued under the AG implemented on September 1, 2006. The DOD implemented the amended AG on June 8, 2017, while this decision was pending. This decision will be decided based on the amended AG effective June 8, 2017.

### **Findings of Fact**

Under Guideline G, the SOR alleges that Applicant consumed alcohol to the point of intoxication from about January 2009 to at least June 2014, and that this excessive consumption resulted in four arrests for driving under the influence of alcohol (DUI), an arrest for underage purchase or possession of alcohol, and alcohol-related treatment for a condition diagnosed as alcohol dependence. Applicant denies one of the DUI arrests, and admits the other allegations. The SOR further alleges that Applicant tested positive for alcohol while enrolled in a treatment program, and that despite his diagnosis of alcohol dependence, he continued to consume alcohol. Applicant denies that he tested positive for alcohol, but admits that he continued to consume alcohol after being diagnosed as alcohol dependent.

Under Guideline H, the SOR alleges that Applicant used marijuana with varying frequency between about October 2003 and September 2013<sup>1</sup>, including while holding a security clearance, that Applicant was arrested in about May 2012 for charges including possession of marijuana, and that he was arrested in June 2012, and charged with possession of marijuana. Applicant admits that he used marijuana at varying times during the alleged time span, but denies he was ever arrested for possession of marijuana. The SOR cross-alleges under Guideline J, the alcohol-related arrests and the hit-and-run alleged under Guideline G, and the Guideline H allegations. Applicant neither admits nor denies the Guideline J allegations. However, he addresses the underlying conduct in his admissions and denials in response to the Guidelines G and H allegations.

The SOR alleges under Guideline E that Applicant intentionally falsified his e-QIP by failing to list his arrests for possession of marijuana, and that Applicant was terminated from employment in 2012 after being arrested for driving under the influence of alcohol in a company vehicle. Applicant denies that he intentionally falsified his e-QIP. He also

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<sup>1</sup> While the SOR alleges that Applicant used marijuana until September 2013, and Applicant admits this allegation, the record evidence as a whole establishes that Applicant's last marijuana use was in August 2013.

denies the allegation about his 2012 termination of employment, however, he admits the termination and its cause.

Applicant is a 29-year-old network administrator employed by a defense contractor since February 2015. He was previously employed in the same position by another defense contractor beginning in August 2014. He served on active duty in the U.S. Marine Corps from September 2007 until September 2011. He deployed for two combat tours, and received a General under Honorable Conditions discharge. He has held a security clearance since approximately September 2007. Applicant is married and he and his wife have two young children. (GX 2.)

Most of the SOR allegations arise from Applicant's abuse of alcohol, use of marijuana, and his conduct while under the influence of these substances. Applicant began drinking alcohol, sometimes to the point of intoxication, on weekends in high school. After enlisting in the Marine Corps in 2007, Applicant would drink to the point of intoxication about one weekend a month, despite the fact that he was underage. After Applicant returned from his deployment to Iraq in September 2009, he was 21 and able to purchase alcohol for himself. For a period of approximately two weeks following his return, he drank to the point of intoxication daily. He then started drinking to the point of intoxication each weekend. Applicant consumed excessive amounts of alcohol, in part, to control his stress, depression, and night terrors that he began experiencing after his deployments. (GX 2; GX 3.)

Applicant was arrested and charged with his first DUI in October 2009. He was court-ordered to complete an alcohol assessment and attend a Substance Abuse Rehabilitation Treatment Program (SARP), which he did from approximately February to March 2010, but did not complete. Applicant admits in his answer that he was diagnosed with alcohol dependence. His court date was repeatedly continued, and Applicant was not convicted until he pled guilty in April or May 2011. He did not drink for a few months following the arrest, but then resumed drinking to the point of intoxication every weekend. (GX 3.)

Applicant attended pre-deployment training from June 2010 to August 2010, where he only consumed alcohol on one or two occasions. In August 2010, Applicant deployed to Afghanistan where he did not consume any alcohol. He returned from deployment in March 2011, but did not consume any alcohol. Beginning in mid-April 2011, Applicant and a fellow Marine with whom Applicant had deployed twice were both nearing discharge, and began heavily consuming alcohol on a daily basis. After his discharge, Applicant went back to drinking to intoxication each weekend. In May 2011, Applicant was charged with providing alcohol to underage people at a party. He pled guilty and was sentenced to community service. (GX 3.)

Applicant's pattern of drinking to the point of intoxication only on the weekends continued until he became involved with his former girlfriend. Applicant and his girlfriend drank to the point of intoxication on a daily basis. On June 16, 2012, Applicant and his girlfriend began drinking alcohol after they awoke. At approximately 11:00 that night,

Applicant drove his girlfriend and another friend to a bar. After consuming alcohol in the bar, Applicant got lost while trying to drive back to the bar to pick up his girlfriend and friend. He was arrested and charged with DUI. He pled guilty to DUI in September 2012. Following his arrest, Applicant continued drinking alcohol every weekend. (GX 3.)

While Applicant's June 2012 DUI charge was still pending, he accepted a job and moved to another state in August 2012. He consumed alcohol "constantly because he felt sorry for himself and he was having a hard time dealing with having broken up with" his girlfriend. (GX 3.) On August 24, 2012, after consuming alcohol for several hours at a bar, Applicant was arrested and charged with DUI, while driving a company-owned vehicle. He was immediately terminated from his employment. He returned home, hired an attorney, pled guilty to the out-of-state DUI, and was court-ordered to have an interlocking device installed on his vehicle. (GX 3.)

Applicant pled guilty to the June 2012 DUI in September 2012. He was placed on probation for one year, required to attend an educational program about alcohol abuse, and court ordered into counseling. The counseling program required Applicant to participate in two group therapy sessions and one individual session each week. He was also required to remain abstinent, and was subjected to random urinalysis. He did not consume any alcohol between September 2012 and June 2013, when he began consuming alcohol to the point of intoxication every two or three days. His frequent intoxication ultimately resulted in his being fired from his job. In August 2013, while intoxicated at a party, Applicant used marijuana. Later that month, he failed a random urinalysis for marijuana, and was arrested for violating his probation. He did not consume alcohol following the arrest until November 2013, when he again began consuming alcohol to the point of intoxication each weekend. Applicant continued to consume alcohol each weekend until about June 2014. (GX 3.)

Between June 2014 and July 2015, Applicant only consumed alcohol on a few occasions, and not to the point of intoxication. In about August 2014, Applicant moved to his current state of residence. In doing so, he changed his social surroundings and friends. He drank alcohol on New Year's Eve 2014, and on July 4, 2015, while visiting home and attending a baseball game. On each of these two occasions, he only had two beers. (GX 3; Response.)

Applicant has completely abstained from alcohol use since August 2015. He initially sought assistance through the Department of Veterans Affairs, and by attending Alcoholics Anonymous (AA) meetings. He continues to participate in AA, and has recently begun treatment with a counselor to address the underlying issues that led to his alcohol abuse. (AX A.) He acknowledges the devastating role that alcohol played in his life, and is remorseful. He accepts full responsibility for his actions while under the influence of alcohol. He is committed to his family, his job, and his sobriety. He has completed several computer certification programs and completed 20 college-credit hours since October 2015. He has no intention of drinking alcohol in the future. (Response; AX A.)

Applicant began occasionally using marijuana recreationally in high school. He did not use marijuana while on active duty between 2007 and 2011. Beginning in September 2011, after his discharge from the Marine Corps, he began to use marijuana two to four times per week, in an effort to control his depression, stress, and night terrors. At the time, Applicant was working in a frozen yogurt/delicatessen. His marijuana use continued while he was dating his former girlfriend, and working as a bank teller. (GX 2; GX 3.)

In May 2012, Applicant was pulled over for a traffic violation, the police officer found marijuana in Applicant's car, and Applicant received a summons for possession of marijuana. He went to court, the officer did not appear, and the case was dismissed. (GX 3.) In June 2012, Applicant hit a vehicle parked in front of its owner's house. He stopped to assess the damage, and the owner came out of her house. She went back inside to call the police, and Applicant, who believed there was no damage to the other vehicle, sped away from the scene. A police officer witnessed Applicant's rapid departure and pulled him over. The police officer found marijuana in Applicant's car, which Applicant claims belonged to his passenger, Applicant's former girlfriend's sister, and issued a summons for possession of marijuana and hit-and-run. When Applicant appeared in court, the possession of marijuana charge was dismissed due to insufficient evidence. He was found guilty of hit-and-run and fined. Applicant stopped regularly using marijuana in July or August 2012 in anticipation of beginning new employment.

Applicant last used marijuana on a single occasion in August 2013 at a party, while intoxicated. He has never used any other illegal drugs, and he no longer associates with anyone who uses marijuana, including his former girlfriend. Applicant stated, in writing, his intent to completely abstain from any future use of marijuana, and his recognition that any such use is grounds for revocation of his security clearance. Applicant never used marijuana while working as a defense contractor. (GX 2; Response.)

The SOR alleges under Guideline E that Applicant intentionally falsified his e-QIP by failing to list a May 2012 and a June 2012 arrest for possession of marijuana, as alleged under Guideline H. Applicant denies the falsification allegation, asserting that he was never arrested or convicted for possession of marijuana. Applicant listed his marijuana use and other derogatory information on his e-QIP, and discussed his marijuana use, including the two summonses for possession of marijuana with the background investigator during his personal subject interview (PSI), before being confronted. (GX 2; GX 3.)

The SOR also alleges under Guideline E that Applicant was terminated from his employment in August 2012, following his arrest for DUI in a company-owned vehicle. Applicant disclosed both the DUI arrest and the job termination on his e-QIP, and openly discussed these events during his PSI. (GX 2; GX 3.)

Following his two deployments, Applicant suffered from anxiety and depression, which he attempted to self-medicate with alcohol in marijuana. Applicant stopped regularly using marijuana in 2012 after his relationship with his former girlfriend ended, and last used it one time in 2013, while intoxicated. He began drastically reducing his

alcohol consumption in 2014, and has maintained complete sobriety for over two years. He has recently entered counseling to address the underlying issues of his alcohol abuse. He has not had any alcohol-related or other legal incidents since 2013. Applicant acknowledges his conduct and takes full responsibility for his actions. (GX 2; GX 3; Response.)

Since achieving sobriety, Applicant has taken many positive steps. He and his new wife now have a second child, and Applicant purchased a home. Applicant's employment is a tremendous source of pride for him, and he largely credits his motivation to maintain sobriety on his dedication to his job. He was promoted to a network administrator over a year ago, and is currently in line for a second promotion. He has continued to take college courses and is pursuing a bachelor's degree. He has had his full driving privileges restored, and is no longer under the jurisdiction of any court. (AX A.)

Applicant's direct supervisor from about July 2014 until August 2016 states that Applicant is a hard worker, dependable, and driven to improve himself both professionally and personally. He further states that his "observations of the last three years are that [Applicant] is a changed man, trying to make amends for past mistakes." (AX A.)

Applicant's second-level supervisor since August 2016 states that Applicant is professional, stable and a contributing member of the work team. He further states that Applicant is "a competent young veteran making a successful transition to civilian life." A coworker and friend states that Applicant "demonstrated a thirst for knowledge, a tenacious work ethic, and a determination for advancement and self-improvement." (AX A.)

## **Policies**

"[N]o 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 applicants 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's meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines 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 and 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 that 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 made “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, a decision to deny a security clearance 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. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[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**

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

The concern under this guideline 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.

Conditions that could raise a security concern and may be disqualifying include:

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 the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder;

AG ¶ 22(b): alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, drinking on the job, or jeopardizing the welfare and safety of others, regardless of whether the individual is diagnosed with alcohol use disorder;

AG ¶ 22(c): habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder;

AG ¶ 22(d): diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder;

AG ¶ 22(e): the failure to follow treatment advice once diagnosed;

AG ¶ 22(f): alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder; and

AG ¶ 22(g): failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

Conditions that could mitigate security concerns include:

AG ¶ 23(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 judgment;

AG ¶ 23(b): the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;

AG ¶ 23(c): the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and

AG ¶ 23(d): the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and



established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Applicant began drinking, sometimes to the point of intoxication, while in high school, and continued to do so after enlisting in the Marine Corps. When Applicant returned from his second combat deployment in 2011, he began frequently drinking to the point of intoxication, in an effort to deal with his stress, depression, and night terrors. At some point, he was diagnosed as alcohol dependent. He participated in court-ordered alcohol education and treatment, but resumed a pattern of drinking to the point of intoxication following the programs. His drinking resulted in DUI arrests, and other alcohol-related charges. This conduct gives rise to AG ¶¶ 22(a) through 22(f).

In 2014, soon after moving to another state and beginning work with his current employer, Applicant completely stopped drinking to the point of intoxication. In about August 2015, Applicant stopped consuming any alcohol whatsoever, and has been abstinent since that time. He continues to participate in AA, and is now engaged in counseling to address the issues that led to his alcohol abuse. He has not had any alcohol-related arrests or other incidents since 2013. He has changed his environment, is now married, and has two children he is committed to his sobriety, his family, and his job. Applicant acknowledges his alcohol dependence and has completely abstained from use since August 2015. AG ¶¶ 23(a), 23(b), and 23(d) apply.

#### **Guideline H, Drug Involvement and Substance Misuse**

The concern under this guideline is set out in AG ¶ 24:

The illegal use of controlled substances . . . can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

The following disqualifying conditions apply under this guideline:

AG ¶ 25(a): any substance misuse;

AG ¶ 25(b): illegal possession of a controlled substance; and

AG ¶ 25(f): any illegal drug use while granted access to classified information or holding a sensitive position.

The following mitigating conditions may also apply:

AG ¶ 26(a): the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not

cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

AG ¶ 26(b): the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:

- (1) disassociation from drug-using associates and contacts;
- (2) changing or avoiding the environment where drugs were used; and
- (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

Applicant used marijuana with varying frequency from October 2003 until August 2013. He did not use marijuana between 2007 and 2011, while on active duty. He has continuously held a security clearance since 2007, however, he did not ever use marijuana while having access to classified information or working in a sensitive position. He began using marijuana again after his discharge in 2011. His marijuana use continued while dating his former girlfriend. He was charged with possession of marijuana twice in 2012. He stopped regularly using marijuana in 2012, and he last used marijuana in August 2013. This conduct invokes AG ¶¶ 25(a) and 25(f).

Illegal involvement with a controlled substance(s) after being granted a security clearance raises heightened concerns about a person's judgment, reliability and trustworthiness, and requires a judge to closely scrutinize any claim of reform and rehabilitation. See ISCR Case No. 16-02005 at 3 (App. Bd. June 2, 2017)

While Applicant's marijuana use while holding a clearance raises heightened concerns, it must also be viewed in the context of his alcohol abuse and overall mental and emotional state at the time he was abusing substances. Applicant was suffering from anxiety, depression, and night terrors as a result of his two combat tours. He attempted to self-treat these symptoms through the use of alcohol and marijuana. While Applicant technically held a clearance between 2011 and 2013, he was not working in the defense industry, and specifically did not use marijuana during his brief employment with a federal contractor in 2012. Applicant recognized the actual and potential impact that substance abuse, primarily alcohol abuse, was having and could have on his life. He stopped using marijuana regularly in 2012, coincident with the end of his relationship with his former girlfriend, and his last one-time use, while intoxicated, was in August 2013.

The Directive does not define "recent," and there is no "bright-line" definition of what constitutes "recent" conduct. ISCR Case No. 03-02374 at 4 (App. Bd. Jan. 26, 2006). The Judge is required to evaluate the record evidence as a whole and reach a reasonable

conclusion as to the recency of an applicant's conduct. ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 2006).

Applicant no longer associates with his former girlfriend or anyone else who uses marijuana. He moved to another state, started a family, continued pursuing higher education, and dedicated himself to his employment. He has declared in writing that he has no future intent to ever use marijuana again. Applicant's marijuana use is not recent, happened under circumstances that are unlikely to recur, and does not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶¶ 26(a) and 26(b) apply.

## **Guideline J, Criminal Conduct**

The concern under this guideline 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 following disqualifying conditions apply under this guideline:

AG ¶ 31(a): a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness;

AG ¶ 31(b): evidence . . . of criminal conduct, regardless of whether the person was formally charged, formally prosecuted, or convicted; and

AG ¶ 31(d): violation or revocation of parole or probation, or failure to complete a court-mandated rehabilitation program.

The following mitigating conditions are potentially applicable:

AG ¶ 32(a): so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

AG ¶ 32(d): there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant's arrests, charges, and other questionable conduct occurred while he was in the height of his alcohol abuse. He is not had any arrests or charges since 2013, and has not used marijuana since that time. Applicant has been completely sober since August

2015. He has completed all court requirements, and has had his driving privileges fully restored. He is dedicated to his job, has received one promotion, and is scheduled for another one. He is pursuing his bachelor's degree. His past conduct does not cast out on his current reliability, trustworthiness, or good judgment. AG ¶¶ 32(a) and 32(b) apply.

## **Guideline E, Personal Conduct**

The concern under this guideline is set out in AG ¶ 15:

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

The following disqualifying conditions are potentially applicable:

AG ¶ 16(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 national security eligibility or trustworthiness, or award fiduciary responsibilities; and

AG ¶ 16(c): credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

The following mitigating conditions are potentially applicable:

AG ¶ 17(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; and

AG ¶ 17(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 contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

Applicant fully disclosed and discussed his marijuana use on his e-QIP, and with the background investigator during his PSI. In denying the Guideline H SOR allegations about his arrest for possession of marijuana, Applicant asserts that he was never arrested. In denying the Guideline E SOR falsification allegation, Applicant reasserts that he was never arrested for possession of marijuana. There is no record evidence supporting the allegation that Applicant intentionally falsified his e-QIP.

Applicant's termination from employment in August 2012, for driving under the influence of alcohol in a company-owned vehicle, is mitigated by time. This past conduct does not cast doubt on Applicant's reliability, trustworthiness, or good judgment and is unlikely to recur. AG ¶ 17(c) applies.

### **Whole-Person Concept**

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. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a).

I have incorporated my comments under Guidelines G, H, J, and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but I have also considered the following:

Applicant has met his high burden of persuasion. He served in the Marine Corps for four years, including two combat deployments. After his discharge, Applicant began abusing alcohol and marijuana, primarily in an effort to alleviate his depression, stress, and night terrors he began experiencing following his deployments. Applicant has taken positive steps, including cessation of marijuana use since August 2013, and alcohol use since August 2015. He has sought ongoing support for his sobriety by attending AA, and is now also treating with an individual counselor. He has clearly demonstrated his commitment to reform and rehabilitation. He is respected and trusted by his supervisors, has been promoted to network administrator, and is in line for a second promotion. He is pursuing a bachelor's degree. He accepts responsibility of his past conduct, and is committed to his sobriety, his family, and his job.

Applicant candidly disclosed derogatory information about his alcohol abuse, alcohol-related arrests, and his marijuana use. His voluntary disclosures of adverse

information and his positive behavioral changes are a testament to his trustworthiness, reliability, and good judgment. Overall, the record evidence leaves me with no questions or doubts about Applicant's present eligibility for a security clearance.

After weighing the disqualifying and mitigating conditions under Guidelines G, H, J, and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his conduct. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline G (Alcohol Consumption):	FOR APPLICANT
Subparagraphs 1.a – 1.i:	For Applicant
Paragraph 2, Guideline H (Drug Involvement)	FOR APPLICANT
Subparagraphs 2.a – 2.c:	For Applicant
Paragraph 3, Guideline J (Criminal Conduct):	FOR APPLICANT
Subparagraphs 3.a – 3.b:	For Applicant
Paragraph 4, Guideline E (Personal Conduct):	FOR APPLICANT
Subparagraphs 4.a – 4.b:	For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Stephanie C. Hess  
Administrative Judge