



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



In the matter of:)
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[NAME REDACTED]) ISCR Case No. 17-01478
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)
Applicant for Security Clearance)

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: Patrick K. Korody, Esq.

08/16/2018

Decision

MALONE, Matthew E., Administrative Judge:

Applicant’s drug involvement is mitigated by the passage of time and by the likelihood that the positive results of a 2015 drug test were in error. He did not mitigate the security concerns about his long history of alcohol abuse and alcohol-related criminal conduct. He also failed to mitigate related personal conduct security concerns, as well as concerns about his deliberate falsification of a 2015 application for clearance. Applicant’s request for a security clearance is denied.

Statement of the Case

On October 21, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to renew his eligibility for a security clearance required for his employment with a defense contractor. Based on the results of the ensuing background investigation, Department of Defense (DOD) adjudicators could not

determine that it is clearly consistent with the interests of national security for Applicant to have a security clearance.¹

On November 9, 2017, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guideline for drug involvement and substance misuse (Guideline H), alcohol consumption (Guideline G), criminal conduct (Guideline J), and personal conduct (Guideline E). Applicant timely responded to the SOR (Answer) and requested a hearing.

I received the case on March 20, 2018, and convened the requested hearing on May 9, 2018. The parties appeared as scheduled. Department Counsel proffered Government Exhibits (GX) 1 - 8. Applicant testified and proffered Applicant Exhibits (AX) A – I; however, AX D was subsequently withdrawn.² GX 3³ and AX C⁴ were admitted over objections. All other exhibits were admitted without objection.

Four witnesses also testified. The testimony of one of those witnesses was presented via AX A, a compact disk containing a recorded interview of the witness by Applicant's lawyer. The recording was played in court and is documented in the hearing transcript (Tr.) received on May 17, 2018, at pages 72 – 82. I listened to the recording after the hearing and am satisfied that the transcript is an accurate reflection of the recording. I admitted AX A without objection by the Government, but have assigned it less weight than might be afforded testimony from a witness that was subject to cross-examination.

Procedural Issue

At the close of the record, Department Counsel moved to amend the SOR by withdrawing the allegation at SOR 1.d. I granted the motion and have amended the SOR by striking SOR 1.d and deleting reference to SOR 1.d in the cross-allegations at SOR 3.a and 4.a. (Tr. 141 – 142)

Findings of Fact

Under Guideline H, the Government alleged that on September 29, 2015, Applicant tested positive for cocaine during a workplace drug test and that he held a security clearance at that time (SOR 1.a); that around July 1995, he was arrested for possession of cannabis and possession of drug paraphernalia (SOR 1.b); that in about November 1994, he was arrested for possession of drug paraphernalia (SOR 1.c); and

¹ Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive), as amended.

² Tr. 60.

³ Tr. 20 – 23.

⁴ Tr. 29.

that in 1993, he was arrested for possession of marijuana (SOR 1.d). In response, Applicant denied SOR 1.a and 1.d and admitted SOR 2.b and 2.c. (Answer)

Under Guideline G, the Government alleged that in February 2013, Applicant was arrested and charged with driving while intoxicated (DWI) (SOR 2.a), after which he was ordered to attend DWI school in September 2013 (SOR 2.b). It also was alleged that in September 2007, Applicant was charged and found guilty of being drunk in public and alcohol consumption/intoxication (SOR 2.c); that in 2005, he was ordered to attend an alcohol education class (SOR 2.d); that between April and July 2004 (SOR 2.e), and in 1998 (SOR 2.k), he received court-ordered alcohol counseling (SOR 2.e); that in October 2004 (SOR 2.f), October 2002 (SOR 2.g), August 2000 (SOR 2.i), and June 1999 (SOR 2.j), Applicant was arrested and charged with driving under the influence (DUI); that in February 2001, he was arrested and charged with being drunk in public (SOR 2.h); and that in 1998 (SOR 2.l) and 1997 (SOR 2.m), while serving in the U.S. Navy, Applicant received non-judicial punishment (Captain's Mast) for being drunk and disorderly. In response, Applicant admitted all of the Guideline G allegations. (Answer)

Under Guideline J, the Government cross-alleged as criminal conduct the drug-related conduct in SOR 1.a – 1.d (SOR 3.a). The SOR also cross-alleged as criminal conduct the alcohol-related offenses at SOR 2.a – 2.c, 2.f – 2.j, 2.l and 2.m (SOR 3.b). Applicant responses to the SOR 1 and 2 allegations are incorporated by reference as his responses to SOR 3.a and 3.b. (Answer)

Under Guideline E, the Government alleged that Applicant deliberately made false official statements when he omitted from his October 2015 e-QIP the drug and alcohol-related offenses addressed at SOR 1.b – 1.d, 2.a – 2.c, 2.f – 2.j, 2.l and 2.m (SOR 4.a). It was further alleged that in 2004, Applicant was denied a security clearance because of security concerns about illegal drug involvement, alcohol consumption, and falsifying a security clearance application (SOR 4.b). Lastly, the SOR cross-alleged as adverse personal conduct the SOR allegations regarding drug use and alcohol consumption (SOR 4.c). Applicant denied SOR 4.a and admitted SOR 4.b. His responses to the SOR 1 and 2 allegations are incorporated by reference as his response to SOR 4.c. (Answer)

Applicant's admissions in response to the SOR establish those allegations as facts. Additionally, I make the following additional findings of fact. Applicant is 41 years old and works as an electronics technician for a defense contractor. He has worked for his current employer since October 2006. Applicant has held similar positions with different defense contractors since May 2002. He served in the U.S. Navy from January 1996 until January 2000, when he was honorably discharged. Applicant was married from March 2014 until March 2015. (GX 1; GX 6)

Before he enlisted in the Navy, Applicant was arrested for misdemeanor marijuana and paraphernalia possession in 1994, when he was 17, and 1995, when he was 18. He avers he has not illegally used or possessed any controlled substance since then. (Answer; GX 1; GX 4; GX 5)

In 2015, Applicant applied for work with a new contractor that was winning contracts for some of the same work he was doing for his current employer. At the time, the new company offered better opportunities and more pay. As part of the hiring process, Applicant had to pass a drug test. On September 29, 2015, an employee of that company administered the drug test by taking a swab of the inside of Applicant's mouth. A week or so later he was told his sample had tested positive for cocaine. Applicant has adamantly denied using cocaine or any illegal substance since his use of marijuana as a teenager. When the positive test results came to the attention of his employer through the Joint Personnel Adjudications System (JPAS), his employer directed him to submit to another drug test. That test produced negative results on October 6, 2015. Two other drug tests were negative for illegal substances on October 22 and December 22, 2015. A former co-worker who also was seeking employment with the new company in September 2015 also was given a cheek-swab drug test. A few minutes after leaving the new company's office, he was contacted and told a mistake had been made and he needed to return for another test. That witness testified that the office where the test was administered was disorganized because the staff was still moving in. The witness was a Navy veteran and had worked for Applicant's current employer for nine years before September 2015. He had been tested for drugs several times, but always by urinalysis. (Answer; GX 3; AX C; Tr. 62 – 71, 89 – 90)

In May 2002, in connection with his employment with a defense contractor, Applicant submitted a security clearance application from which he intentionally withheld information material to an assessment of his suitability for a security clearance. Specifically, Applicant omitted information about previous drug and alcohol-related arrests. The background investigation that ensued from his 2002 SCA, which included a signed, sworn statement he gave to a government investigator in July 2002, also revealed adverse information about alcohol-related counseling he received. On January 28, 2004, Applicant was issued an SOR presenting allegations that raised security concerns under Guidelines G, J, and E. On June 29, 2004, a DOHA administrative judge denied Applicant's request for a security clearance. On September 17, 2004, the DOHA Appeal Board affirmed the denial. In January 2005, Applicant was fired from his defense contractor position because he could not obtain a security clearance. In April 2011, Applicant applied for a clearance, and disclosed the information alleged at SOR 2.c, 2.e and 2.f. Applicant has held a secret security clearance since 2012. (GX 1; GX 3; GX 7; GX 8)

Questions in his section 22 of Applicant's 2015 e-QIP required disclosure of any drug or alcohol-related arrests or charges regardless of when they occurred. In response, Applicant answered "no," thereby omitting all of the alcohol-related arrests alleged in the SOR 2, as well as the two marijuana possession charges addressed in SOR 1.b and 1.c. Elsewhere in the e-QIP (Section 24), he disclosed that he completed court-ordered alcohol counseling (SOR 2.e) after his 2004 DUI arrest (SOR 2.f). Further, in Section 25 (Investigations and Clearance Record), Applicant disclosed, *inter alia*, the 2004 denial by DOHA of his request for clearance, and stated that "I was in a hurry to complete my

paperwork and left out a lot of information. I was young⁵ and did not take it seriously, a decision I recognize now and greatly regret.” As to his omissions from his 2015 e-QIP, Applicant stated that he thought the information about his arrests had been “pre-loaded” because he had previously discussed his arrests when he was granted a clearance in 2012, as well as during his first background investigation in 2002. This explanation did not account for his disclosure of only a 2004 alcohol counseling associated with his 2004 DUI. The administrative judge who denied Applicant’s request for clearance in 2004 cited Applicant’s excuse that he omitted information from his clearance application because he did not remember the dates of those offenses, but knew that he would be able to discuss that information in a subsequent subject interview with an investigator. As part of the current investigation and adjudication of his request for clearance, Applicant was interviewed by a government investigator on February 23, 2016. A summary of that interview shows that the investigator repeatedly had to confront Applicant with information about arrests and other misconduct after Applicant claimed there was nothing to be discussed other than what he had already disclosed. (Answer; GX 1; GX 2; GX 6 – 8; Tr. 108 – 110)

Applicant has consumed alcohol since he was 12 years old, and alcohol abuse was prevalent in his family when he was growing up. His father died in an alcohol-related accident and his mother is a recovering alcoholic. Applicant joined the Navy to get away from his hometown and those alcohol-related circumstances, but his drinking only worsened in the Navy and for several years after he started working in the defense industry. As documented in his 2004 denial and in the record evidence in this case, Applicant was arrested or charged nine times with alcohol-related offenses between 1997 and 2013. The first two of those offenses occurred while he was in the Navy and resulted in loss of rank, forfeiture of pay, and extra duty. Applicant acknowledged that his drinking brought his Navy career to a premature end because he would not be able to advance beyond a certain paygrade and would not be allowed to re-enlist. He was twice ordered to undergo alcohol evaluation and counseling in the Navy. On at least one occasion, a counselor assessed him as being an alcohol abuser. Applicant understood this to mean that he was not dependent on alcohol and did not feel a compulsion to drink, but that he should not drink because he would drink to excess if he started. He avers he last consumed alcohol on Christmas Eve in 2017 and that he intends to abstain from future alcohol consumption. At hearing, Applicant testified that he identified as an alcoholic. (Answer; GX 2; GX 7; Tr. 93 – 97, 106 – 108, 112 – 128, 131 – 135)

Applicant’s drinking was at its worst between 2002 and 2006. He estimated that he was intoxicated most days during that time. Some of his arrests occurred while he was on work-related travel. During that time, he occasionally reported to work hungover without any adverse effect on his work, because he was just another member of the work crew. Eventually, Applicant assumed more responsibility that required preparation for his duties and accountability for the results. Having a hangover became incompatible with work and, after he was charged and found guilty of public intoxication while on travel for

⁵ Applicant was 26 years old at the time.

work in 2007, Applicant made an effort to reduce his drinking. Nonetheless, in September 2013, he was arrested and charged with DUI. Applicant agreed to plead guilty to a lesser charge of reckless driving. He was ordered to complete alcohol counseling, after which he was referred to additional counseling. He did not receive a diagnosis as a result of that counseling. (Answer; GX 2; GX 4; GX 5; Tr. 121 – 128)

Applicant's September 2013 arrest occurred the day he returned from a four-month overseas work assignment. He went to a local bar with a person who testified at this hearing about the events of that day (hereinafter "Witness") to see other friends and claims he did not intend to drink and drive. To that end, Witness agreed to act as a designated driver and drove Applicant in his truck to the bar. Their plan was that Applicant would stay at Witness's house at the end of the evening. Applicant had several drinks and was intoxicated when they left the bar, but Witness did not drink at the bar. On their way back to Witness's house, they stopped at a house in Witness's neighborhood where mutual acquaintances had gathered to remember someone who had just died. The cars of those attending were parked along both sides of the street in front of the house. Alcohol was being served at this gathering, and both Applicant and Witness consumed alcohol there. When they left, Applicant's truck would not start and needed a jump start. Witness walked to his house, retrieved his vehicle and jump started Applicant's truck. Witness left Applicant with the truck, drove home and returned a short time later. When Witness returned, police had arrived and Applicant was being arrested.

Witness and Applicant testified that as Witness was leaving, he collided with Applicant's truck causing only minor damage. People in the house where the memorial gathering was held had called the police after hearing a collision. A police report of the incident shows that an off-duty police officer attending the gathering saw "a pickup truck spinning tires and back out of the driveway, bumping into a parked car across the street." That person identified Applicant as the driver of the pickup truck. The officer who responded determined that Applicant had been drinking and administered a breathalyzer test that showed Applicant had a .209 blood alcohol content, more than twice the legal limit for that jurisdiction. He subsequently arrested Applicant, charging him with DUI and damage to property. Applicant eventually pleaded guilty to reckless driving but still had to complete court-ordered alcohol counseling. (Answer; GX 2; GX 4; GX 5; AX A; AX B; Tr. 72 – 82, 97 – 103)

Applicant claims he only drank in moderation between September 2013 and Christmas Eve 2017. He had attended Alcoholics Anonymous (AA) in conjunction with court-ordered counseling after some of his arrests, and he attended AA sporadically on his own. He has no record of having engaged in AA or other recovery program on any consistent basis. Applicant claims his personal circumstances have changed since 2013, in that he no longer associates with people who drink to excess. He lives quietly and adheres to a lifestyle supportive of sobriety. As one indicator of his lifestyle, he presented a credit report that shows he has an excellent credit score. Applicant believes attending to his personal finances in a responsible way would not be possible if he was living as he had in the past. His personal and professional recommendations uniformly laud him for

his hard work, his technical expertise and leadership, and his overall reliability and trustworthiness. Applicant has received two meritorious promotions in the past three years, and his performance evaluations since 2008 have been superior. Aside from the two alcohol-related UCMJ infractions, his performance in the Navy was also above average. (Answer; AX E – I; Tr. 35 – 71)

Policies

DOD adjudicators applied the adjudicative guidelines issued by the Director of National Intelligence on December 10, 2016, and made effective for all adjudications on or after June 8, 2017. Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁶ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(d) of the guidelines. Commonly referred to as the “whole-person” concept, those factors are:

- (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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁷ for an applicant to either receive or continue to have access to classified information.

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁸ A person who has access

⁶ See Directive. 6.3.

⁷ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁸ See *Egan*, 484 U.S. at 528, 531.

to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.⁹

Analysis

Drug Involvement and Substance Misuse

The security concern about Applicant’s involvement with illegal drugs is stated at AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose 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. *Controlled substance* means any “controlled substance” as defined in 21 U.S.C. 802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

Appellant’s pre-employment drug screening test in 2015 was positive for cocaine. Additionally, he was arrested for misdemeanor possession of marijuana and related paraphernalia as a teenager. Applicant presented sufficient information that calls into question the validity of the 2015 drug test. A co-worker’s experience strongly suggested that the drug screening may not have been properly administered. Additionally, Applicant took and passed another drug test that showed negative results close on the heels of the initial test. Having assessed all of the information probative of whether Applicant tested positive for cocaine while holding a security clearance in September 2015, I conclude he did not. The allegation at SOR 1.a is resolved in his favor.

As to SOR 1.b and 1.c, those arrests require consideration of the disqualifying condition at AG ¶ 25(c) (*illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia*). By contrast, the mitigating condition at 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*) applies. Applicant’s illegal drug involvement last occurred over 20 years ago and is unlikely to recur. This security concern is mitigated.

⁹ See *Egan*; AG ¶ 2(b).

Alcohol Consumption

Applicant's use of alcohol reasonably raised the security concern articulated at 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.

Between 1997 and 2013, Applicant was arrested or charged nine times for alcohol-related offenses. His most recent arrest in 2013 was based on a BAC of .209. Applicant has admitted to being intoxicated most days between 2002 and 2006. He has received court-ordered or command-directed alcohol counseling at least four times. While he was in the Navy, an alcohol counselor advised him that he was an alcohol abuser. Applicant was raised in a household where alcohol abuse was prevalent, and at hearing he testified that he identifies as an alcoholic and intends to abstain from future alcohol consumption. This information requires application of the following AG ¶ 22 disqualifying conditions:

- (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; and
- (c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder.

I also have considered the following AG ¶ 23 mitigating conditions as potentially applicable on this record:

- (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;
- (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;
- (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

(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 claims he moderated his drinking after his 2013 arrest, and that he has not consumed alcohol since December 2017. As to his 2013 arrest, he had clearly engaged in abusive drinking, as indicated by a BAC more than twice the legal limit. Before then, he claims to have moderated his drinking after a 2007 public intoxication charge, only to engage in excessive drinking six years later. The security concerns raised by Applicant's long history of alcohol-related problems must be addressed by more than claims to sobriety and a change of lifestyle. The passage of five years since his last incident is not, in this context, sufficient to support AG ¶¶ 23(a) or 23(b). As to treatment and rehabilitation, Applicant was advised almost 20 years ago that he was abusing alcohol. Since then, and despite currently identifying as an alcoholic, he has not engaged in any sustained and verifiable effort to address his drinking in a way that would inspire confidence that he will not repeat his past behavior. Available information does not support any of the AG ¶ 23 mitigating conditions, and the security concerns about Applicant's use of alcohol remain unresolved.

Criminal Conduct

The security concern about criminal conduct is articulated at 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.

At SOR 1.a, the Government cross-alleged as criminal conduct Applicant's positive drug test in 2015; however, it was not established that Applicant used cocaine in 2015. As to the remaining information pertinent to this guideline, available information shows that Applicant has a history of criminal conduct that began when he was charged with marijuana possession as a teenager. It continued when he joined the Navy and for most of the next 20 years through a series of alcohol-related arrests as a civilian. Applicant established that the alcohol-related arrest alleged at SOR 2.a and cross-alleged at SOR 3.b was reduced to a reckless driving charge. Nonetheless, the fact that he had a .209 BAC and was identified as driving his pickup truck that evening is sufficient to show that Applicant was, in fact, driving his vehicle while heavily intoxicated.

Available information requires application of the following AG ¶ 31 disqualifying conditions:

(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; and

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

I also have considered the following AG ¶ 32 mitigating conditions:

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

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

(c) no reliable evidence to support that the individual committed the offense; and

(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 last instance of criminal conduct was in 2013. All of his criminal conduct since 1998 is alcohol-related. For the same reasons I concluded he has not established a sufficient record of reliable sobriety, the five years that have passed since his last arrest is not sufficient to establish ¶ 32(a). The evidence that Applicant committed the offenses listed is substantial. Without rehabilitation regarding alcohol, there can be no rehabilitation with respect to his criminal conduct. The mitigating conditions at AG ¶¶ 32(b) – (d) are not applicable based on this record. The security concerns under this guideline are not mitigated.

Personal Conduct

The security concern under this guideline is articulated at 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 will normally result in

an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

Available information shows that Applicant deliberately withheld from his 2015 e-QIP information about his arrest record that was relevant and material to an accurate assessment of his suitability for a security clearance. This is at least the third time that Applicant has been asked to provide such information in a clearance application. In 2004, he was denied a clearance, in part, because he withheld information about his arrests. When he submitted his 2015 e-QIP, Applicant answered “no” to the same question of whether he has ever been arrested or charged with a drug or alcohol-related offense. I do not find credible his explanation that he thought such information would be “pre-loaded” in the questionnaire. In disclosing information about his past investigations for clearance, Applicant acknowledged that in 2004 he had not taken the process seriously; however, in 2015 he still did not pay sufficient attention to the Government’s need for complete and accurate information about his background before he certified that his answers were true. The foregoing requires application of the disqualifying condition at 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.

As alleged at SOR 4.b, Applicant was denied a security clearance in 2004 because of adverse information about his alcohol consumption, criminal conduct, and personal conduct. The record in this case shows that Applicant has continued the same sort of conduct over the 14 years since that denial. Further, the Government alleged at SOR 4.c that Applicant’s drug involvement and his history of alcohol-related criminal conduct also reasonably raised a broader security concern about Applicant’s overall judgment, trustworthiness, and reliability. Because the drug involvement concerns are mitigated, that aspect of SOR 4.c is resolved for Applicant. Nonetheless, his use of alcohol and his history of alcohol-related misconduct remains a security concern and requires application of the disqualifying condition at 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.

I also considered the following pertinent AG ¶ 17 mitigating conditions:

(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 advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully; and

(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.

As to Applicant's false statements in his e-QIP, there is no indication he tried to correct his omissions. To the contrary, the summary of his most recent subject interview with a government investigator shows that he was repeatedly confronted with information he had not disclosed when given the opportunity to do so. Additionally, Applicant did not show that he sought any guidance about how to complete his e-QIP or what information he was required to disclose. His claim that he thought his arrest information was already provided in the form is untenable. As to the broader security concerns about his arrests and use of alcohol, there is nothing minor about Applicant's long record of such conduct. Applicant did not present sufficient information to show that those aspects of his background will not recur and no longer reflect adversely on his judgment. Available information does not support application of the above-named AG ¶ 17 mitigating conditions. The security concerns under this guideline are not mitigated.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). Applicant presented positive recommendations and testimony from current and former coworkers, as well as one of his neighbors. They all view Applicant in a positive light and recommend that he retain his security clearance. None of them is aware of any reason why the Government would not want Applicant to have access to classified information. Additionally, Applicant has a solid track record of on-the-job performance

over the past ten years and he has been recognized for his professionalism and expertise. Unfortunately, the facts and circumstances that required a denial of his request for a clearance in 2004, have continued. Having reviewed the record evidence as a whole, I am left with significant doubts regarding Applicant's use of alcohol and the potential for future alcohol-related criminal offenses. More important, Applicant's omissions of important adverse information in his background from his most recent application for clearance is especially disconcerting in light of his previous denial of access for similar reasons.

The record evidence as a whole leaves me with doubts that Applicant's problems with alcohol, criminal conduct, and overall personal conduct are behind him. Because protection of the interests of national security is the principal focus of these adjudications, those doubts must be resolved against the Applicant.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	FOR APPLICANT
Subparagraphs 1.a - 1.c:	For Applicant
Subparagraph 1.d:	Withdrawn
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraphs 2.a – 2.m:	Against Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Subparagraph 3.b:	Against Applicant
Paragraph 4, Guideline E:	AGAINST APPLICANT
Subparagraphs 4.a – 4.c:	Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge