



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



In the matter of:

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ISCR Case No. 17-01593

Applicant for Security Clearance

**Appearances**

For Government: Caroline E. Heintzelman, Esq.

For Applicant: *Pro se*

04/12/2018

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant used marijuana about 1,000 times; he distributed marijuana about seven times; and he was arrested three times for driving under the influence of alcohol (DUI). He presented insufficient information to mitigate security concerns. Guideline G (alcohol consumption), H (drug involvement and substance abuse), and J (criminal conduct) security concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On July 8, 2016, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). Government Exhibit (GE) 1. On June 7, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective on September 1, 2006 (Sept. 1, 2006 AGs).

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security 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. Specifically, the

SOR set forth security concerns arising under Guidelines G, H, and J. Hearing Exhibit (HE) 2.

On June 14, 2017, Applicant provided a response to the SOR and requested a hearing. HE 3. On August 15, 2017, Department Counsel was ready to proceed. On November 7, 2017, the case was assigned to me. On November 8, 2017, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for December 1, 2017. HE 1. Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered three exhibits; Applicant offered four exhibits; there were no objections; and all proffered exhibits were admitted into evidence. Tr. 14-15; GE 1-3; AE A-D. On December 18, 2017, DOHA received a copy of the hearing transcript.

The Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing in Appendix A the new adjudicative guidelines (AGs), which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position on or after June 8, 2017. The new AGs supersede the previous AGs, and I have evaluated Applicant's security clearance eligibility under the new AGs.<sup>1</sup>

### **Findings of Fact<sup>2</sup>**

Applicant's SOR response admitted all of the SOR allegations. HE 3. He also provided mitigating information. Applicant's admissions are accepted as findings of fact. Additional findings of fact follow.

Applicant is a 29-year-old information technology specialist. Tr. 5, 33-34; GE 1. In 2007, he graduated from high school, and in 2014, he received a bachelor's degree in general studies with a certificate in informatics. Tr. 6. He has not served in the military. Tr. 6. He has never married, and he does not have any children. Tr. 6.

### **Alcohol Consumption**

When Applicant was a 19-year-old freshman in college, he received pretrial diversion for underage possession of alcohol. Tr. 21. In March 2011, when he was 22 years old, he was arrested for DUI, and he was subsequently convicted of DUI. Tr. 20-22. His breathalyzer test result showed a blood alcohol content (BAC) of .16. Tr. 23. The court sentenced him to 270 days in jail (266 days were suspended), to about nine months of probation, and to a fine. Tr. 24. He was ordered to abstain from alcohol consumption, and he complied with that order. Tr. 24. About a month after his probation ended, he resumed his alcohol consumption. Tr. 24.

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<sup>1</sup> Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case. The new AGs are available at [http://ogc.osd.mil/doha/SEAD4\\_20170608.pdf](http://ogc.osd.mil/doha/SEAD4_20170608.pdf).

<sup>2</sup> Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

In April 2014, the police arrested Applicant for DUI, and he was subsequently convicted of DUI. His breathalyzer test result was a BAC of about .16. Tr. 26. The court sentenced him to one year in jail (355 days were suspended) and to a fine. His driver's license was suspended for one year, and the court placed him on probation for one year. Tr. 26. He was not supposed to drink alcohol during his probation; however, he drank alcohol "a few times." Tr. 26.

In May 2015, the police arrested Applicant for his third DUI offense, and he was charged with DUI. His breathalyzer test result was about .17. Tr. 27. Because he was still on probation for his April 2014 DUI, his probation was extended. He pleaded guilty to felony-level DUI, endangering a person while DUI, and violating probation. SOR response. Adjudication was deferred pending completion of a substance abuse program. SOR response. He received court-ordered outpatient counseling three times a week for eight weeks starting in July 2015. Tr. 17-18. He attended aftercare counseling for eight additional weeks after completing the outpatient phase of his alcohol counseling. Tr. 18. From July 2015, to August 3, 2017, he was in a substance abuse treatment program. Tr. 18-19. He was tested for use of alcohol and illegal drugs, and all tests were negative. Tr. 19. He did not consume alcohol while he was in the program; however, after he completed the program, he resumed alcohol consumption. Tr. 20. He was diagnosed with alcohol use disorder, moderate. Tr. 17.

On August 3, 2017, Applicant successfully completed probation. Tr. 28. He attended Alcoholics Anonymous (AA) meetings about 3 times a week for 30 months after his May 2015 DUI. Tr. 28, 30. He did not agree with some of the information he received from AA, such as step one about being powerless over alcohol. Tr. 38, 42-43. He went to AA meetings because he believed the meetings had value. Tr. 42-43.

When Applicant responded to the SOR on June 14, 2017, he said he had been sober since May 28, 2015, and he said he did not intend to use alcohol in the future. He denied that he craved alcohol. He did not believe he was or is addicted to alcohol or that he is an alcoholic. Tr. 30. His family expressed concern to him about his resumption of alcohol consumption. Tr. 31. He keeps alcohol at his home, and he consumed alcohol one month before his hearing while he was at a bar. Tr. 16-17. He was most recently intoxicated by alcohol in May 2015. Tr. 16. He has consumed enough alcohol once or twice to have a blackout, and he has had withdrawal symptoms once or twice. Tr. 32-33. His DUI arrests were not the only times he drove after consuming too much alcohol. Tr. 33.

### **Drug Involvement and Substance Abuse**

Applicant used marijuana about 1,000 times from approximately June 2006 to January 2015. Tr. 34-35. He has smoked marijuana and then driven a vehicle. Tr. 36. He stopped using marijuana when he went on probation for his DUI, and he was subject to urinalysis tests for marijuana. Tr. 35.

In November 2007, Applicant was charged with possession of marijuana and marijuana paraphernalia. He received a \$300 fine and pretrial diversion for the two offenses. GE 3.

In March 2011, Applicant was charged with possession of marijuana and marijuana paraphernalia in connection with his first DUI arrest. He had a bag of marijuana and marijuana paraphernalia in his vehicle when the police arrested him for DUI. Tr. 35-36.

From approximately April 2009 to May 2010, Applicant purchased marijuana on numerous occasion and on about seven occasions, he distributed marijuana to a friend. GE 3. On August 3, 2017, Applicant successfully completed a drug treatment program. AE A. He does not intend to use marijuana in the future. Tr. 36-37. For several years, Applicant associated with friends who used marijuana. Tr. 37. He has different friends now. Tr. 38. He does not associate with marijuana users. Tr. 40. He is willing to do whatever is necessary to establish his rehabilitation to enable him to obtain a security clearance and resume his career in information technology. Tr. 41-42.

### **Criminal Conduct**

SOR ¶ 3.a cross-alleges the same conduct as alleged under the alcohol consumption guideline in SOR ¶ 1 for the three DUIs as criminal conduct. SOR ¶ 3.b cross-alleges the same conduct as alleged under the drug involvement and substance abuse guideline in SOR ¶ 2 for his marijuana possessions.

### **Character Evidence**

Three of Applicant's coworkers positively described his work performance. The general sense of their statements is that he is helpful, detail oriented, courteous, efficient, competent, ethical, diligent, well organized, and professional. AE B-AE D. Their statements support approval of his security clearance.

### **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 in this decision should be construed to suggest that it is based, 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, Secretary of Defense, and DNI 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 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 Government’s concern about alcohol consumption, “Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.”

AG ¶ 22 lists seven conditions that could raise a security concern and may be disqualifying in this case including:

- (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;

(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;

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

(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;

(e) the failure to follow treatment advice once diagnosed;

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

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

AG ¶¶ 22(a), 22(c), and 22(d) apply. Applicant had three alcohol-related incidents involving the police and the courts between 2011 and 2015. Each time his breathalyzer BAC results were between .15 and .18. His breathalyzer BAC results establish that he engaged in binge-alcohol consumption to the extent of impaired judgment.<sup>3</sup> He was diagnosed with alcohol use disorder, moderate.

AG ¶ 23 details conditions that could mitigate security concerns including:

(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;

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<sup>3</sup> "Binge drinking is the most common pattern of excessive alcohol use in the United States." See the Center for Disease Control website, (stating "The National Institute on Alcohol Abuse and Alcoholism defines binge drinking as a pattern of drinking that brings a person's blood alcohol concentration (BAC) to 0.08 grams percent or above. This typically happens when men consume 5 or more drinks, and when women consume 4 or more drinks, in about 2 hours."), <https://www.cdc.gov/alcohol/fact-sheets/binge-drinking.htm>. There are other definitions of "binge alcohol consumption" that involve different alcohol-consumption amounts and patterns.

(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.

The DOHA 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).

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). See *also* ISCR Case No. 08-04232 (App. Bd. Oct. 9, 2009) (affirming denial of security clearance for Applicant with alcohol-related criminal offenses for six years prior to hearing). For example, in ISCR Case No. 05-16753 at 2-3 (App. Bd. Aug. 2, 2007) the Appeal Board reversed the administrative judge's grant of a clearance and noted, "That Applicant continued to drink even after his second alcohol-related arrest vitiates the Judge's application of MC 3."

In ISCR Case No. 05-10019 at 3-4 (App. Bd. Jun. 21, 2007), the Appeal Board reversed an administrative judge's grant of a clearance to an applicant (C) where C had several alcohol-related legal problems. However, C's most recent DUI was in 2000, six years before an administrative judge decided C's case. C had reduced his alcohol consumption, but still drank alcohol to intoxication, and sometimes drank alcohol (not to intoxication) before driving. The Appeal Board determined that C's continued alcohol consumption was not responsible, and the grant of C's clearance was arbitrary and capricious. See *also* ISCR Case No. 04-12916 at 2-6 (App. Bd. Mar. 21, 2007) (reversing grant of a clearance for applicant with four alcohol-related incidents, most recent alcohol-

related incident was three years before hearing, and substantially reduced alcohol consumption for three years before hearing, but not abstinence).

I have carefully considered the Appeal Board's jurisprudence on alcohol consumption. Applicant attended numerous AA meetings, and he successfully completed a substance abuse program in August 2017. He successfully completed probation for all of his DUIs. He has not had any alcohol-related arrests since May 2015.

The factors that weigh against mitigation of alcohol consumption security concerns are more significant: (1) Applicant had three alcohol-related driving offenses in the previous 10 years; (2) after a period of abstinence, he resumed his alcohol consumption; (3) each time he had a DUI, he engaged in binge alcohol consumption; and (4) he was diagnosed with alcohol use disorder, moderate. I have lingering doubts and concerns about Applicant's current reliability, trustworthiness, and good judgment. Alcohol consumption security concerns are not mitigated.

### **Drug Involvement and Substance Abuse**

AG ¶ 24 articulates the security concern for drug involvement:

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.

AG ¶ 25 provides two conditions that could raise a security concern and may be disqualifying in this case: "(a) any substance misuse (see above definition)"; and "(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia." Applicant possessed and used marijuana<sup>4</sup> on numerous occasions. He was arrested for possession of marijuana or possession of drug paraphernalia or both in 2007 and 2011. AG ¶¶ 25(a) and 25(c) are established.

AG ¶ 26 details conditions that could mitigate security concerns:

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<sup>4</sup> Schedules I, II, III, IV, and V, as referred to in the Controlled Substances Act are contained in 21 U.S.C. § 812(c). Marijuana is a Schedule (Sch.) I controlled substances. See Drug Enforcement Administration listing at [http://www.deadiversion.usdoj.gov/21cfr/cfr/1308/1308\\_11.htm](http://www.deadiversion.usdoj.gov/21cfr/cfr/1308/1308_11.htm). See also *Gonzales v. Raish*, 545 U.S. 1 (2005) (discussing placement of marijuana on Schedule I).

(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;

(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;

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and

(d) satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

DNI Memorandum ES 2014-00674, "Adherence to Federal Laws Prohibiting Marijuana Use," October 25, 2014, indicates:

[C]hanges to state laws and the laws of the District of Columbia pertaining to marijuana use do not alter the existing National Security Adjudicative Guidelines . . . . An individual's disregard of federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations. As always, adjudicative authorities are expected to evaluate claimed or developed use of, or involvement with, marijuana using the current adjudicative criteria. The adjudicative authority must determine if the use of, or involvement with, marijuana raises questions about the individual's judgment, reliability, trustworthiness, and willingness to comply with law, rules, and regulations, including federal laws, when making eligibility decisions of persons proposed for, or occupying, sensitive national security positions.

Applicant provided some mitigating information. He successfully completed a substance abuse treatment program. He ended his marijuana involvement in May 2015. He promised not to use marijuana in the future.

The evidence against mitigating drug involvement and substance abuse security concerns is more substantial. Applicant used marijuana about 1,000 times. He possessed marijuana before he used it. He distributed marijuana about seven times to a friend. Each

time he possessed or distributed marijuana, he committed a crime. He was arrested twice for marijuana possession. Drug involvement security concerns are not mitigated.

## **Criminal Conduct**

AG ¶ 30 describes the security concern about criminal conduct, “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.”

AG ¶ 31 describes two conditions that could raise a security concern and may be disqualifying in this case: “(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.”

Applicant’s DUI offenses and marijuana possession offenses constitute criminal conduct under state law. His distribution of marijuana is a federal criminal offense.<sup>5</sup> AG ¶ 31(b) is established. His multiple marijuana offenses and three DUIs constitute patterns of criminal offenses, and AG ¶ 31(a) is established.

AG ¶ 32 lists conditions that could mitigate security concerns:

- (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

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<sup>5</sup> His possession of marijuana is not a federal crime under 21 U.S.C. Section 841(a); however, it is a federal crime to distribute marijuana. Title 21 U.S.C. Section 841(a) states:

Unlawful acts. Except as authorized by this title, it shall be unlawful for any person knowingly or intentionally—(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or (2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

education, good employment record, or constructive community involvement.

The mitigating information in the alcohol consumption and drug involvement and substance abuse sections are fully applicable to security concerns under the criminal conduct guideline. There is insufficient information to mitigate the criminal conduct security concerns.

### **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(d):

(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), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guidelines G, H, and J are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is a 29-year-old information technology specialist. In 2014, he received a bachelor's degree in general studies with a certificate in informatics. Three of Applicant's coworkers positively described his work performance and character. Their statements support approval of his security clearance.

The evidence against granting his security clearance is more persuasive. From June 2006 to January 2015, Applicant used marijuana about 1,000 times, and he distributed marijuana to a friend about seven times. He was arrested for DUI on three occasions. He currently consumes alcohol. Notwithstanding some rehabilitative information, his marijuana possession, use, and distribution, and three DUIs raise unresolved "questions about [his] reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about [his] ability or willingness to comply with laws, rules, and regulations." See AG ¶ 24.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, and the AGs, to the facts and circumstances in the context of the whole person. Guidelines G, H, and J 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:	AGAINST APPLICANT
Subparagraphs 1.a through 1.d:	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a through 2.d:	Against Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraphs 3.a and 3.b:	Against Applicant

### **Conclusion**

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

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Mark Harvey  
Administrative Judge