



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



In the matter of: )  
)  
) ISCR Case No. 17-02406  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Robert Blazewick, Esq., Department Counsel  
For Applicant: Francis J. Flanagan, Esq.

06/19/2018  
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**Decision**  
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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant was arrested several times on illegal drug and assault charges and once for driving under the influence (DUI) during his late teens and early 20s. He pleaded guilty to refusing a breathalyzer test following a more recent arrest for DUI in December 2015. While he showed poor judgment on that occasion, he has turned his life around. There is little likelihood of recurrence. Clearance is granted.

**Statement of the Case**

On July 27, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline J, criminal conduct, and Guideline E, personal conduct. The SOR explained why the DOD CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action under Executive Order (EO) 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to*

*Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective within the DOD on June 8, 2017.

Applicant responded to the SOR on August 21, 2017, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On January 9, 2018, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On January 11, 2018, I scheduled a hearing for February 7, 2018.

At the hearing, four Government exhibits (GEs 1-4) were admitted in evidence. A September 8, 2017 letter forwarding discovery of the GEs to Applicant's counsel was marked as a hearing exhibit (HE 1) but not admitted as an evidentiary exhibit. One Applicant exhibit (AE A) was admitted in evidence. Applicant and five witnesses testified, as reflected in a transcript (Tr.) received on February 16, 2018.

I held the record open to February 23, 2018, for additional exhibits from Applicant. Applicant submitted a report of a substance abuse evaluation (AE B), which was accepted into the record without any objection.

### **Summary of SOR Allegations**

The SOR alleges under Guideline J and cross-alleges under Guideline E (SOR ¶ 2.a) that Applicant was arrested in December 1998 for felony conspiracy to deliver marijuana (SOR ¶ 1.a); in February 2000 for felony assault with a dangerous weapon (SOR ¶ 1.b); in June 2000 for simple assault and malicious mischief (SOR ¶ 1.c); in May 2002 for simple assault and possession of marijuana (SOR ¶ 1.d); in November 2002 for possession of marijuana (SOR ¶ 1.e); in November 2002 for felony possession of marijuana (SOR ¶ 1.f); in December 2002 for DUI (SOR ¶ 1.g); in May 2004 for felony possession of marijuana and prescribing or selling anabolic steroids (SOR ¶ 1.h); in July 2015 for domestic disorderly conduct (SOR ¶ 1.i); and in December 2015 for DUI (SOR ¶ 1.j). When Applicant responded to the SOR, he admitted the allegations without explanation.

### **Findings of Fact**

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 37-year-old structural engineer with a bachelor's degree in mechanical engineering awarded in May 2016. He has been employed by a defense contractor since November 2016. (GEs 1-2.)

Applicant and his brother, now age 36, were raised by their mother after their parents separated in 1987. (GE 1; AE B; Tr. 17, 50.) They did not have much supervision when they were young. While in high school, Applicant and his brother smoked marijuana with each other and with a close cousin around their age. Applicant used marijuana socially

a couple of times a week. He obtained the drug from classmates and friends. (GE 2.) After graduating from high school in June 2000, Applicant socialized with three or four friends who had little interest in furthering their education and little to no structure. (Tr. 60.) Applicant got into legal trouble several times when he was 17 to 23 years old, as follows.

Applicant was arrested for felony conspiracy to deliver marijuana in December 1998 (SOR ¶ 1.a). He had gone with a female friend to visit her boyfriend at a house apparently known by local police for drug dealing. Applicant attests that an undercover police officer tried unsuccessfully to get his friend to sell him drugs, but both Applicant and his friend were charged with conspiracy. Applicant had not dealt in any marijuana and did not have any marijuana on him when he was arrested, and the charge against him was dropped in October 1999. (GEs 1-2.)

Applicant was charged with possession of alcohol by a minor in October 1999 (not alleged in SOR). He pleaded nolo contendere and was fined \$100. (GE 4.)

In late February 2000, Applicant had a fight at a convenience store with someone who called him a racial slur. When the police arrived, the other person claimed that Applicant had kicked him while he was on the ground defenseless. Applicant was arrested for assault with a dangerous weapon. Store surveillance tape showed that the person had not been struck while on the ground, and the charge against Applicant was amended to misdemeanor simple assault. Applicant pleaded nolo contendere in May 2000, and he was sentenced to six months of supervised probation, with credit for one day served; to pay \$705 in restitution; and to have no contact with the victim. Applicant satisfied the restitution in March 2001. (GEs 1-4; Tr. 20-22.) Applicant now understands that he made a mistake in engaging with the person who uttered the racial slur. (Tr. 22.)

Applicant was arrested for simple assault and malicious mischief in June 2000, in violation of his probation for the February 2000 assault. There is little information about the offense other than that Applicant got into an argument, was jumped by three people, and then left the scene. They claimed he was the aggressor, even though he was dazed and hospitalized. (Tr. 44.) He was released on bail on the conditions that he attend alcohol counseling and stay away from the victim. The program's focus was alcohol education. (Tr. 41.) In late June 2000, he pleaded nolo contendere to both charges. He was sentenced on each charge to six months in jail, suspended; given consecutive one-year probation terms; and ordered to pay restitution for the property and medical damages. (GEs 3-4.)

Shortly after his high school graduation, Applicant lost his cousin to suicide in 2000. The death of his close cousin, who he considered to be his best friend, put him in "a very tough place." (Tr. 40.)

In May 2002, Applicant got into a fight in public. When the police arrived, they found a half of a marijuana cigarette in Applicant's pocket. Applicant was arrested for simple assault and possession of marijuana, first offense, both misdemeanors. He pleaded nolo contendere to both charges in June 2002. For the simple assault, he was sentenced to one year in jail (suspended), placed on one year probation, and assessed \$93.50 in court costs.

He was sentenced to six months of probation on the drug charge and ordered to pay an indemnity fee of \$100. (GEs 1-4; Tr. 24.)

In early November 2002, Applicant was stopped for speeding. The police officer found marijuana on him, in violation of his probation for the May 2002 offenses. He pleaded nolo contendere to possession of marijuana and was fined \$200. He paid his fine and court costs in early December 2002. (GEs 1-4; Tr. 25.)

In mid-November 2002, Applicant was stopped for a license plate light infraction. The police found marijuana in his vehicle, and he was arrested for possession of marijuana, subsequent offense, a felony. He pleaded nolo contendere in early December 2002, was adjudged guilty, and sentenced to two years in jail, suspended; placed on two years of probation; fined \$1,000; and ordered to participate in a drug program and undergo drug testing. With a final payment in September 2006, he satisfied \$2,093 in total fines and payments, but only after two bench warrants had been issued against him for nonpayment. (GEs 1-4; Tr. 25.)

Applicant was arrested for misdemeanor DUI, first offense, in mid-December 2002 after drinking to intoxication at a party. He pleaded nolo contendere the next day and was sentenced to one year in jail with 11 months suspended; placed on 11 months of probation; fined \$100 and \$680.50 in court costs; ordered to perform ten hours of community service. Applicant stayed in a holding unit during his 30 days in jail, and he satisfied his fine and costs with a final payment in July 2004. (GEs 1-4; AE B.) The experience of being in a holding cell with a variety of inmates motivated him to change his lifestyle. He ceased drinking excessively and fraternizing with peers who were negative influences. (AE B.)

After he was released from jail, Applicant held inconsistent work in construction as a laborer or roofer. Each summer from 2004 to 2015, he held a part-time job as a member of a field crew for a local music festival foundation. He was staying temporarily with his mother and brother in their home in May 2004 when the police came to the home and searched the premises for drugs. They found some marijuana and anabolic steroids and arrested Applicant for felony possession of marijuana, second offense, and possession of anabolic steroids. Applicant pleaded not guilty, and the charges were eventually dismissed in late February 2005. Applicant's brother testified in court that the drugs were his and did not belong to Applicant. (GEs 1-4; Tr. 29-32, 70.)

After years of living from paycheck to paycheck and realizing that he had to do something positive with his life, Applicant enrolled in a local community college in September 2011. He transferred to his state university in January 2013. (GE 2; Tr. 33-34.) In 2014 or 2015, he began dating his current girlfriend. They had attended the same high school but had little contact after 2000 until they began dating. (Tr. 79, 84.)

In July 2015, Applicant and his brother had a loud argument over a text his brother had sent to Applicant's girlfriend. A neighbor contacted the police, and both Applicant and his brother were arrested for disorderly conduct-domestic. Applicant pleaded not guilty and the charge was dismissed in August 2015. (GEs 1-4; Tr. 45, 71-72.)

After finishing his last college examination of the semester in December 2015, Applicant went out to dinner with his girlfriend. Applicant consumed four beers at dinner. Applicant's girlfriend testified that he was not drunk when she was with him that evening. (Tr. 83.) They left separately, and Applicant was stopped two blocks away from the pub and arrested for misdemeanor DUI, first offense. He pleaded not guilty at his arraignment. In February 2016, the charge was dismissed and his case was transferred to the state's department of motor vehicles in return for his guilty plea to refusal to submit to a breathalyzer, a traffic violation. An Interlock device was installed on his vehicle for several months. (GEs 1-4; Tr. 34-36, 46, 65.)

Applicant viewed the 2015 DUI as a "reawakening" in that he realized if he continued to make similar mistakes, it would not matter if he had a college degree. He would have difficulty landing a good job and perhaps retaining his a job if an incident happened after he was employed. (Tr. 35.) He resolved to drink no more than three beers at a sitting and to not drive after drinking even one alcoholic beverage. (GE 2.)

At age 35, Applicant earned his bachelor's degree in mechanical engineering. In application for a position with his defense contractor employer, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) on August 5, 2016. He disclosed his arrest record, including his arrest for DUI in December 2015, and the court-ordered counseling and drug testing for his 2002 marijuana offense. Under additional comments, Applicant explained that when he was younger, he had "engaged in getting into trouble, like smoking marijuana, getting into fights and drinking," but that he had turned his life around and would not jeopardize this "opportunity of a life time." (GE 1.) Applicant began working for his employer with an interim clearance in November 2016. (GE 2; Tr. 16-17.)

On May 3, 2017, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). Applicant discussed his arrest record, although in doing so, he did not volunteer that he had been jailed for his November 2002 felony marijuana offense. Regarding his December 2015 DUI, Applicant stated that he had learned his lesson and no longer drinks after drinking one beer. As for his marijuana use, Applicant denied any use of the drug since at least 2010. He could not recall the date of his last use. He ceased his marijuana use because he wanted to turn his life around, and he denied any intention to use marijuana in the future. He described his marijuana use as "minimal" after his 2015 DUI arrest—beer only and never more than three beers with dinner. He indicated that he drinks two or three times a month, but that he can go months without drinking. While acknowledging that he made poor decisions on occasions in the past when he consumed alcohol to excess, he could not recall when he last drank to intoxication. He expressed a plan to drink alcohol moderately in social settings. (GE 2.)

Applicant takes his job seriously and has no intention of jeopardizing it. (Tr. 37.) He spends most of his free time with his girlfriend or working out. (AE B; Tr. 39.)

On February 19, 2018, Applicant underwent a substance abuse evaluation by a clinical psychologist. Inventories designed to assess stability of lifestyle suggested stability in Applicant's commitment to be responsible regarding the use of alcohol. In the opinion of the psychologist, the history Applicant related and the inventories "support the current stability of his reformed lifestyle." (AE B.)

### Character references

Applicant's mother, uncle, brother, girlfriend, and one of his former teachers testified on his behalf. They all believe Applicant has turned his life around. Applicant's mother was concerned about Applicant's drinking when he was younger but not in recent years. He concentrated on his schoolwork when he was in college. (Tr. 56.) Applicant's uncle attested to the close relationship that Applicant shared with his son before his son's suicide in 2000. He observed that Applicant became less impulsive as the years passed. He currently sees Applicant once or twice a month and has no concerns about his drinking since the 2015 DUI. (Tr. 60-62.) Applicant's brother considers college to be primary factor in Applicant changing his life. He knows Applicant's girlfriend and believes she is a good influence on his brother. (Tr. 69, 73.)

Applicant's girlfriend has worked as a financial analyst for a branch of the U.S. military for the past 15 years. She has a secret clearance. (Tr. 79.) Convinced that Applicant is no longer the same person that he was in high school, she does not believe that Applicant would put his security clearance at risk. In her experience, Applicant has a couple of beers when he does drink. (Tr. 81-82.) Applicant's former teacher initially met Applicant as a 7<sup>th</sup> grade student. More recently, he worked with Applicant at the local music festival from 2000 through 2014. Applicant was conscientious and dependable in that job. He is also of the opinion that Applicant has turned his life around. (Tr. 90-91.)

A retired police sergeant for the community where Applicant was raised is aware that Applicant got into trouble from time to time during his youth. Even then, Applicant was always polite in their interactions. He became reacquainted with Applicant over the last couple of years and was impressed by Applicant's maturation and professional demeanor. He does not believe Applicant presents a security risk. (AE A.)

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative

process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. 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. Section 7 of EO 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline J: Criminal Conduct**

The security concern about criminal conduct is articulated 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 criminal conduct concerns are established by Applicant's February 2000 simple assault; his June 2000 simple assault and malicious mischief; his May 2002 simple assault and marijuana possession; his November 2002 marijuana possession; his November 2002 felony marijuana possession; and his December 2002 DUI. Applicant pleaded *nolo contendere* to all those charges, and he received various sentences as noted above. Court records show that he was presented as a violator because his June 2000 assault was in violation of his probation for his February 2000 assault, even though the violation report was withdrawn after a hearing. When he was arrested for marijuana possession in early

November 2002, he was on probation for his May 2002 marijuana possession and simple assault. He was on probation for his second marijuana offense in November 2002 when he was arrested for DUI in December 2002. Three disqualifying conditions under AG ¶ 31 apply because of his criminal conduct during his late teens and early 20s:

- (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;
- (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; and
- (d) violation or revocation of parole or probation, or failure to complete a court-mandated rehabilitation program.

Other charges filed against Applicant were dismissed, *i.e.*, the December 1998 felony to distribute marijuana; May 2004 felony possession of marijuana and possession of anabolic steroids; July 2015 domestic disorderly conduct; and December 2015 DUI. AG ¶ 32(b) does not require a conviction, but Applicant denied any culpability in the December 1998 and May 2004 felony drug charges, and the evidence fails to establish any wrongdoing by Applicant in those two instances. Applicant pleaded not guilty to the 1998 felony drug distribution charge because he was only accompanying his friend and had no prior knowledge of any drug dealing. His brother accepted responsibility for the drugs found by the police in their home in May 2004. Mitigating condition AG ¶ 32(c), "no reliable evidence to support that the individual committed the offense," has some applicability. The conduct that led to the domestic disorderly charge in July 2015 was a loud argument between Applicant and his brother without any fighting, which would normally raise little security concern. As for the December 2015 DUI, he pleaded not guilty to DUI at his arraignment. A plea of *nolo contendere* to a refusal charge in traffic court falls short of proving that he was intoxicated, although he admits that he had consumed four beers before driving. He exercised poor judgment within Guideline E, whether or not he was sufficiently intoxicated to sustain a criminal DUI charge.

In assessing the current security significance of Applicant's recidivist criminal conduct during his late teens and early 20s, two mitigating conditions under AG ¶ 32 have some applicability:

- (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
- (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.

There is no evidence of assaultive behavior by Applicant since 2002 or illegal drug possession by Applicant since 2010, if not before then. When asked about his last use of marijuana during his OPM interview, Applicant indicated that he had not used marijuana since at least 2010. He has not been arrested for illegal possession since May 2004, and those drug charges were unfounded. Applicant's case for mitigation under AG ¶ 32(a) because of the passage of time, and under AG ¶ 32(d) based on rehabilitation is undermined somewhat by his arrests in July 2015 and December 2015. While he was not convicted of the criminal charges, he was not entirely blameless. He refused to submit to a breathalyzer after his arrest for DUI without any explanation to dispute the reasonable inference that he feared he might be over the legal limit.

However, Applicant's change to a drug-free lifestyle and his pursuit of a college education are strong evidence in rehabilitation that weigh favorably under AG ¶ 32(d). Regarding the possibility of a DUI recurring, Applicant's mother and his girlfriend both testified that he drinks moderately. They are not concerned about his drinking. One of Applicant's former teachers had an opportunity to work with Applicant for the festival foundation when Applicant was a college student. Applicant was a hard worker and dependable. It shows constructive community involvement on Applicant's part consistent with his claim of reform. The assessment of the clinical psychologist who evaluated Applicant for substance abuse in February 2018 was consistent in finding him stable in his commitment to the responsible use of alcohol. The psychologist found no evidence that would suggest Applicant is not stable in his reformed lifestyle. I am persuaded that Applicant is not likely to jeopardize his career as an engineer by engaging in criminal conduct in the future. He considers his employment with a defense contractor the opportunity of a lifetime and has matured sufficiently to mitigate the criminal conduct security concerns.

#### **Guideline E: Personal Conduct**

The security concern about personal conduct is articulated 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 investigations or adjudicative processes.

Applicant has been candid from the start about his criminal record. While there are no concerns about Applicant's honesty or candor, his repeated criminal behavior triggers issues of questionable judgment under Guideline E. Disqualifying condition AG ¶ 16(c) is implicated in that Applicant's assaults, marijuana possession, and DUI conduct may no longer warrant disqualification under Guideline J because of the passage of time, but they

may still reflect a whole-person assessment of questionable judgment or unwillingness to comply with rules and regulations. AG ¶ 16(c) states:

(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, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

Five mitigating conditions under AG ¶ 17 have some applicability. They are:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

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

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

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

AG ¶ 17(c) is partially established because the assaults and marijuana possession offenses happened so long ago and are attributable to his youth and immaturity at the time. Likewise, Applicant's cessation of illegal drug involvement in 2010, if not before then, and his pursuit of higher education, are favorable changes in his behavior that make recurrence unlikely under AG ¶ 17(d). Regarding AG ¶ 17(e), Applicant is not seen as vulnerable to any undue pressure because of his past misconduct, given he has been forthright with the DOD about his arrest record. AG ¶ 17(f) applies to the December 1998 and May 2004 drug charges for which Applicant had no culpability. AG ¶ 17(g) is partially established in that Applicant no longer associates with the friends of his youth when most of his misconduct occurred. He still has a close relationship with his brother, and they used marijuana together when they were younger. Yet, there is no evidence that illegal drugs have any part in their current relations.

Applicant demonstrated poor judgment in the domestic altercation with his brother in July 2015 and in driving after drinking four beers in December 2015. Nothing about the circumstances of those incidents or the passage of time warrants mitigation under AG ¶ 17(c). Applicant argued over a text message sent by his brother and, in December 2015, Applicant drank when out to dinner with his girlfriend. However, these incidents do not appear to be characteristic of Applicant's current lifestyle, which centers on his work and spending time with his girlfriend. Since his December 2015 arrest, Applicant has been careful to not drive if he drinks alcohol. He has decreased his consumption level to no more than three beers at a sitting. A clinical psychologist evaluated Applicant for substance abuse in February 2018. Inventories administered to Applicant support a determination that Applicant is stable in his commitment to the responsible use of alcohol. He has demonstrated sufficient reform for mitigation under AG ¶ 17(d). The personal conduct security concerns are mitigated.

### **Whole-Person Concept**

In the whole-person evaluation, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d).<sup>1</sup> Some of the factors in AG ¶ 2(d) were addressed under Guidelines J and E, but some warrant additional comment.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong argument against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9<sup>th</sup> Cir. 1990). Applicant would have presented a serious security risk some 10 years ago. Likely due to his youth and immaturity, he was either unable or unwilling to comply with laws, rules, and regulations relating to assaultive behavior and substance use. In his favor, he recognized that his prospects for the future were dim if he lacked a career and continued to party on the weekends. Over the past seven years, he demonstrated his commitment to reform by pursuing his college degree, giving up illegal drugs, and disassociating himself from his old friends. His 2015 arrests for disorderly conduct and DUI are not condoned, but to Applicant's credit, they did not discourage Applicant from pursuing his goals of a college education and a good job. Applicant testified persuasively that he considers his defense-contractor employment to be the opportunity of a lifetime that he does not intend to jeopardize. His family members, his girlfriend, and a former teacher all attest to Applicant having turned his life around. Security clearance determinations are not intended to punish applicants for past wrongdoing. Rather, they involve an assessment of future risk. Based on all the information presented, including the opinion of a clinical psychologist that Applicant is committed to his reformed

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<sup>1</sup> The factors under AG ¶ 2(d) are as follows:

(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.

lifestyle, I find there is little likelihood of recurrence of the criminal conduct and personal conduct security concerns.

### **Formal Findings**

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

Paragraph 1, Guideline J:                   FOR APPLICANT

Subparagraphs 1.a-1.j:                   For Applicant

Paragraph 2, Guideline E:                   FOR APPLICANT

Subparagraph 2.a:                   For Applicant

### **Conclusion**

In light of all of the circumstances, it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Elizabeth M. Matchinski  
Administrative Judge