



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)

ISCR Case No. 12-08123

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

01/14/2014

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is granted.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on January 13, 2012. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on June 4, 2013, detailing security concerns under Guideline E, personal conduct, Guideline G, alcohol consumption, and Guideline J, criminal conduct. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR on June 18, 2013, and he answered it on July 7, 2013. Department Counsel requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on October 1, 2013, and I received the case assignment on October 11, 2013. DOHA issued a Notice of Hearing on October 30, 2013, and I convened the hearing as scheduled on November 20, 2013. The Government offered exhibits (GE) marked as GE 1 through GE 12, which were received and admitted into evidence without objection. Applicant testified. He submitted exhibits (AE) marked as AE A through AE C, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on December 3, 2013. I held the record open until December 12, 2013, for Applicant to submit additional matters. Applicant timely submitted AE D - AE H,¹ which were received and admitted without objection. The record closed on December 12, 2013.

Procedural and Evidentiary Rulings

Notice

Applicant received the written notice of the date, time and place of the hearing less than 15 days before the hearing.² I advised Applicant of his right under ¶ E3.1.8. of the Directive to receive the notice at least 15 days before the hearing. Applicant affirmatively waived this right under the Directive. (Tr. 11.)

Motions

At the hearing, Department Counsel requested by motion to withdraw SOR allegations 1.d and 1.g because the Government decided not to proceed with these allegations. The motion was granted. SOR allegations 1.d and 1.g are withdrawn from the record. (Tr. 8.)

Findings of Fact

In his Answer to the SOR, Applicant admitted all the factual allegations in the SOR with explanation. His admissions are incorporated herein as findings of fact. He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 38 years old, works as a physical security manager for a DOD contractor. He began working for his employer in 1998 as a security officer. Over the past 15 years, he progressively increased his responsibilities at work, moving from

¹Applicant indicated that he also submitted a statement which would be AE I. This statement was not included in his attachments or discussed in his email submission email.

²Applicant verbally agreed to the hearing prior to the mailing of the hearing notice on October 30, 2013.

dispatcher to security lead, to security operations center supervisor, to background screening investigator, and to his current position. He earns approximately \$80,000 yearly. His supervisor, who is also the facility security officer, describes Applicant as a dedicated employee who is a valuable asset to the company. Applicant takes on extra duties. He also obtained certification as a CPR/First Aid/AED trainer on his own to help train the emergency response team at the company. His supervisor verified that Applicant has not had a security violation while working for the company. Applicant's supervisor is aware of his security clearance issues. A senior investigator, who has worked with Applicant since 1998, also describes Applicant as competent, reliable, trustworthy, honest, and hard-working. He verifies that the company moved Applicant through various trusted positions because of his professionalism and integrity. He is not aware of Applicant's security issues. Both recommend Applicant for a security clearance. His performance evaluations reflect that he consistently meets or exceeds his performance standards.³

Applicant graduated from high school in 1993. He enlisted in the United States Air Force in July 1993. He received an honorable discharge from the Air Force in July 1997. While in the Air Force, he received an achievement medal, Airman of the Quarter award, Junior Information Manager award, and Junior Information Manager of the Quarter award. He held a security clearance while in the Air Force.⁴

Applicant and his wife married in May 2002. They have a 10-year-old daughter. Applicant considers his wife's 17-year-old son his son. His wife works as the director of a day care center. Applicant performs volunteer work as a football and basketball coach and at various events for a local middle school. His primary focus is his family and his children.⁵

Applicant consumed his first beer at age 17. He did not drink much in high school because he participated in various team sports, including wrestling, football, and track and did not want to lose his eligibility for team sports because of drinking. Between the ages of 18 and 21, Applicant consumed alcohol about three times a year at social events. He usually drank one or two beers and never drank to intoxication. After age 21, his alcohol consumption increased over time to one to two times a month at social events, as he never drank alone. He drank beer or vodka as a mixed drink. He usually drank two or three alcoholic drinks. He became intoxicated on three occasions, the last in 2008. Since 2008, he has reduced the frequency of his alcohol consumption to six or fewer times a year and the volume of his consumption to one or two beers or mixed drinks. More recently, he has reduced his alcoholic consumption even more. He last had a glass of wine in October 2013 at his mother-in-law's wake. Prior to this occasion, he could not remember when he previously consumed an alcoholic beverage. He no

³GE 1; AE D; AE H; Tr. 30, 57.

⁴GE 1; AE E; Tr. 30, 59.

⁵GE 5; AE B; AE C; Tr. 31.

longer drinks and drives. He and his wife agreed that when they attend social events providing alcohol, one of them will be the designated driver and will not consume alcohol.⁶

During his first leave from the Air Force in 1993 at age 18, Applicant attended a party at a hotel, where a friend had rented a room. As a result of a noise complaint, the police arrived at the party. The police issued everyone over the age of 18 a ticket for “minor in possession” of alcohol and called the parents of everyone under the age 18. He did not consumed alcohol at this event. In 1995, Applicant and an Air Force friend sat in a car. His friend drank beer, but he did not. He decided not to do so because he was near his 21st birthday. A police officer confronted them and cited both for “minor in possession” of alcohol, a misdemeanor offense. Applicant denied consuming alcohol to the police officer, although the police report indicates he admitted to taking one sip of the beer. Applicant continues to deny any alcohol consumption on this occasion. The police report reflects one open beer can and one closed beer can. His friend admitted to the police officer that the beer was his. Applicant appeared in court, paid the fine, and completed that National Council on Alcoholism and Drug Dependence program required by the court. At the hearing, Applicant described this conduct as foolish since he was close to his 21st birthday.⁷

In 1998, Applicant attended a house party, where he consumed six beers over a period of time. He became ill and paramedics were called. The paramedics transported him to the hospital, where his stomach was pumped. After he left the party, the police arrived and charged the individuals at the party with alcohol violations. The police came to the hospital and charged him with being drunk in public, a misdemeanor offense. Applicant pled guilty to the charge, and the court fined him \$100 and sentenced him to one day in jail with credit for one day on his sentence. He listed this incident on his June 2003 SF-86.⁸

After the above incident, Applicant met his wife, who had a young child. He decided to change his alcohol consumption behavior. Five days after his daughter was born in December 2003, Applicant’s friends invited him to a local bar to celebrate his daughter’s birth. He consumed three alcoholic drinks over three hours. He did not feel impaired, so he drove home. On his way home, the police stopped him. He failed the field sobriety test. His blood-alcohol level measured .13%. The police charged him with driving under the influence (DUI). Applicant pled guilty on February 2, 2004. The court sentenced him to six days in jail, which was stayed; fined him \$1,520; restricted his driving privileges to driving to and from work and alcohol programs for 90 days; directed him to attend a first offender program; and placed him on unsupervised probation for three years. He also completed 10 days of community service. Applicant enrolled in a

⁶GE 5; GE 6; Tr. 42-43, 71.

⁷GE 5; GE 6; GE 11; Tr. 33-35, 62-63.

⁸GE 2; GE 5; GE 6; GE 10; Tr. 35, 62.

court approved alcohol education program on February 4, 2004. He completed this program on May 26, 2004. The program included alcohol education classes and group counseling. After this arrest, he decided not to consume alcohol, and if he did, it would be a responsible level of consumption.⁹

During a meeting with a security clearance investigator on July 24, 2004, Applicant completed a signed sworn affidavit. In his affidavit, he discussed his 1993, 1995, 1998, and 2003 alcohol-related tickets and arrests in detail.¹⁰

On February 13, 2005, more than one year after his prior conviction and sentence, the police charged him with driving on a suspended driver's license, expired tags, refusal to take a blood alcohol test, and driving on a suspended driver's license with DUI special violation. Applicant pled guilty to the last charge, and the court placed him on probation for one year as his sentence.¹¹ Applicant understood that the "DUI special offense" related to his driving restriction. He explained that he drove to work early in the morning because he worked the early shift, which violated the driving restriction that allowed him to drive to work between 8 a.m. and 4 p.m. He completed his probation in 2006.¹²

On July 4, 2008, Applicant and friends socialized at a bar. He consumed five beers in less than three hours. He left the bar and sent his wife a text message. On his way to his hotel six blocks from the bar, the police stopped him for talking on his cellular phone. The police smelled alcohol and conducted a field sobriety test, which Applicant failed. The blood-alcohol test measured his alcohol level at .15%. The police arrested and charged him with DUI, a misdemeanor offense. Applicant pled guilty. On October 28, 2008, the court sentenced him to 15 days in jail and allowed him to serve his sentence under the Sheriff's Work Alternative Program (SWAP). The court fined him \$1,960, placed him on five years of unsupervised probation, and directed him to attain sobriety and maintain it. The motor vehicle administration suspended his driving privileges¹³ from October 22, 2008 until November 23, 2009, when it lifted the suspension and instituted restricted driving privileges. The State motor vehicle administration lifted his driving restrictions on November 5, 2010. Applicant currently holds a valid driver's license without any restrictions.¹⁴

⁹GE 5 - GE 7; GE 9; Tr. 37, 46, 62.

¹⁰GE 2.

¹¹Based on the court record, Applicant's driving privileges were restricted for 90 days. The restriction should have ended on May 2, 2004. GE 9.

¹²GE 7; GE 9; Tr. 39-40, 63.

¹³State law gives the motor vehicle administration the authority to suspend driving privileges for many reasons, including a DUI conviction.

¹⁴GE 5; GE 7; GE 12; AE F; Tr. 37-38, 67-68.

In compliance with the court requirement, Applicant enrolled in an alcohol treatment program on November 5, 2008. He participated in group and individual counseling, and he attended the alcohol education programs presented by this group. He paid the charges assessed by the program. He completed the program requirements on June 9, 2010, and the program released him on June 15, 2010. The program did not recommend that he attend Alcoholics Anonymous (AA) or seek other more extensive counseling. Applicant completed his probation on October 22, 2013. The court declined to provide him with any specific information stating that his probation was concluded, but it did give him a copy of the docket sheet showing the date of his sentence.¹⁵

Applicant and his wife discussed the fact that an incident involving him and alcohol seemed to occur every five years. He contacted the above-mentioned alcohol program and learned that a three-month, once-a-week general alcohol education program would begin in January 2014. He plans to attend the classes as a preventive measure. His children have never seen him intoxicated. He drinks in social settings only. He sees no reason to drink in the future and has no plans to do so. He has not been diagnosed as alcohol dependent or with alcohol abuse, nor has he attended AA meetings.¹⁶

On September 11, 2009, Applicant drove his father-in-law's car to work at 5 a.m. The police stopped Applicant because the tags on the car had expired, a motor vehicle violation. The police cited Applicant for driving on a suspended license. The court fined him \$320. There is no evidence in the record that Applicant was placed on two years probation for this ticket as alleged in the SOR.¹⁷ Applicant understood that he was supposed to drive only between the hours of 8 a.m. and 4 p.m. He acknowledged that he did not provide information about his work hours being outside the restriction hours to the motor vehicle administration. Following the hearing, he verified that he worked from 6 a.m. until 2 p.m. on this date and that these were his work hours between August 29, 2009 and October 2, 2009.¹⁸

Applicant completed his most recent e-QIP (SF-86) on January 13, 2012. Section 22, Police Record asks:

Have any of the following happened? (If 'Yes' you will asked to provide details for each offense that pertains to the actions that are identified below.)

¹⁵GE 5; GE 7; GE 8; AE A; Tr. 43, 46-47, 65.

¹⁶GE 8; Tr. 43-46, 71.

¹⁷SOR allegation 1.h alleges that Applicant was placed on two years probation as his sentence for this ticket. The record evidence reflects that the State motor vehicle administration suspended or restricted his driving privileges for two years on October 22, 2008 following his second DUI conviction. The record lacks any evidence of a separate court-ordered probation for this ticket. AE F.

¹⁸GE 5; AE G; Tr. 40-42.

- **In the past seven (7) years** have you been issued a summons, citation, or ticket to appear in court in a criminal proceeding against you? (Do not check if all the citations involved traffic infractions where the fine was less than \$300 and did not include alcohol or drugs)
- **In the past seven (7) years** have you been arrested by any police officer, sheriff, marshal or any other type of law enforcement official?
- **In the past seven (7) years** have you been charged, convicted, or sentenced of a crime in any court? (Include all qualifying charges, convictions, or sentences in any Federal, state, local , military, or non-U.S. court, even if previously listed on this form).
- **In the past seven (7) years** have you been or are you currently on probation or parole?
- Are you currently on trial or awaiting a trial on criminal charges?
Yes: {x} No: { }¹⁹

Applicant's "yes" answer applies to four of the five questions asked in this section. His positive response triggered a detailed request for information. Applicant listed his July 2008 arrest and answered every question about the arrest. He acknowledged that he was sentenced and described his sentence as "Weekend Work Program, Fines and DUI Program." He did not mention probation, the suspension of his driving privileges, or the court directive to attain sobriety and remain sober. The request for detailed information does not specifically request information about probation or parole.²⁰

Section 22 - Police Record - Summary states:

Do you have any other offenses where any of the following has happened to you?

This section lists the above questions and at the end gives Applicant a choice of yes or no for an answer. He answered "no".²¹

Section 22 - Police Record (EVER) asks:²²

Other than those offenses already listed [emphasis supplied], have you **EVER** had the following happen to you?

- Have your **EVER** been convicted in any court of the United States of a crime, sentenced to imprisonment for a term exceeding 1 year for that

¹⁹This section is typed exactly as it appears on Applicant's e-QIP. The e-QIP form does not give Applicant the option of answering "yes" or "no" to each question.

²⁰GE 1.

²¹*Id.*

²²See footnote 19.

crime, and incarcerated as a result of that sentence for not less than 1 year? (Include all qualifying convictions in Federal, state, local, or military court, even if previously listed on this form)

- Have you **EVER** been charged with any felony offense? (Include those under the Uniform Code of Military Justice and non-military/civilian felony offense)
- Have you **EVER** been convicted of an offense involving domestic violence or a crime of violence (such as battery or assault) against your child, dependent, cohabitant, spouse, former spouse, or someone with whom you share a child in common?
- Have you **EVER** been charged with an offense involving firearms or explosives?
- Have you **EVER** been charged with an offense involving alcohol or drugs?
Yes: { } No: {x}²³

SOR ¶¶ 1.i, 1.j, and 1.k allege that Applicant deliberately and intentionally falsified his answers to these questions when he specifically denied he was on probation as set forth in subparagraphs 1.e (2005 ticket for driving on a suspended license DUI Special violation and conviction with one year of probation), 1.f (2008 DUI with five years of probation), and 1.h (two years probation for driving without a license in 2009) and when he failed to list his alcohol-related arrests in 1998 and 2003 and his ticket in 2005.²⁴

Applicant denies intentionally withholding this information from the Government. He did not list the information related to his 2003 DUI arrest, conviction, and probation because he had previously provided this information to the Government in a signed affidavit dated July 16, 2004. He did not list the 2009 ticket because he believed the fine was less than \$300, but later discovered that the fine was \$320. He reported the ticket to his supervisor and FSO by memo on January 23, 2012, 11 days after he completed his e-QIP. In the same memo, he also provided information on his 2003 DUI as he realized the question asked about “ever” and he had not listed the arrest because it was over seven years old and because he did not want to hide anything. He does not know why he did not acknowledge that he was still on probation for his 2008 DUI because he knew he was still on probation. He prepared his e-QIP by hand and submitted it to a staff member for input electronically. The e-QIP system returned his application several times because of errors. After the first input of information, he reviewed the full document. After his first full review, he only reviewed the changes in the document. He did not notice that his answer on probation was incorrect. Since this incident, he and his supervisor, who is also the company FSO, worked on training for Applicant and other employees about what events need to be reported. Applicant received remedial training

²³GE 1; Of the

²⁴SOR.

on completing his e-QIP, the meaning of the word “ever,” and reportable items. He continues to update his training on reportable issues.²⁵

Policies

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 used 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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 access to classified information will be resolved in favor of 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, an applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” An applicant has the ultimate burden of persuasion for obtaining 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 an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

²⁵GE 3; GE 4; AE D; Tr. 86-87.

Section 7 of Executive Order 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 E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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

AG ¶ 16 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:²⁶

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information 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 person may not properly safeguard protected information. This includes but is not limited to consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information:

(2) disruptive, violent, or other inappropriate behavior in the workplace;

²⁶SOR allegations 1.a, 1.b, 1.c, and 1.f concern Applicant's alcohol consumption and related criminal conduct and are specifically addressed under Adjudicative Guidelines G and J.

- (3) a pattern of dishonesty or rule violations; and,
- (4) evidence of significant misuse of Government or other employer's time or resources.

The Government alleges three incidents of falsification by Applicant when he completed his security clearance application. For AG ¶ 16(a) to apply, Applicant's omissions must be deliberate. The Government established that Applicant omitted material facts from his 2012 security clearance application, when he did not list his 2005 and 2009 tickets for driving on a suspended driver's license, his 2003 DUI, his 1998 arrest for drunk in public, and his probationary status. This negative information is material to the evaluation of Applicant's trustworthiness and honesty. In his response and at the hearing, he denied that he intentionally falsified his answers on his e-QIP and had an intent to hide negative information from the Government. When the allegation of falsification is controverted, the Government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred.²⁷

Applicant did not list his 1998 drunk in public citation and conviction or his 2003 DUI because he had listed or acknowledged both in prior security clearance applications and personal subject interviews, giving the Government notice of this negative information. When he realized that he was wrong about the cost of his 2009 ticket for driving on a suspended driver's license, he provided the information to his FSO 11 days after he completed his e-QIP. His action reflects no intent to hide this information from the Government. Concerning the allegation in SOR ¶ 1.k that he failed to report his alcohol-related arrests in 1998, 2003, and his 2005 citation, the summary question requests information about other offenses not previously listed, Applicant's belief that he did not have to again identify information that he had previously provided to the Government in earlier security clearance applications or affidavits is reasonable. Since the Government had prior knowledge of these events and because of Applicant's belief, intentional conduct has not been established.

When he answered "yes" in part 1 of Section 22, he answered "yes" to a series of questions including a question about his current probationary status. His answer is sufficient to place the Government on notice to inquire further. The clarifying questions triggered by his "yes" answer did not make a specific inquiry into an Applicant's probationary status. While his answer about his sentence could have been more detailed, his failure to specifically discuss his probationary status cannot be viewed as intentional when he initially acknowledged it in his answer to part 1 of Section 22. Because the record lacks any information to show that the court placed Applicant on probation for the 2009 ticket, intentional falsification for failure to list this information is

²⁷ See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

not established. Given that Applicant provided the Government with negative information on his 2012 e-QIP (2008 DUI) and on previous security clearance applications, his failure to acknowledge that he was still on probation for his 2008 DUI and his 2005 probation was inadvertent, not intentional. SOR allegations 1.i, 1.j, and 1.k are found in favor of Applicant.

Concerning the allegations in SOR ¶¶ 1.e and 1.h, Applicant's decision to drive on a suspended driver's license reflects a violation of the motor vehicle laws. A security concern is established under AG ¶ 16(d)(4).

The Personal Conduct guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 17(a) through ¶ 17(g), and the following is potentially applicable:

(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;

Applicant's decision to drive on a suspended driver's license in 2005 occurred when his work schedule changed. His driving restriction permitted him to drive to and from work, and the police arrested him as he was driving to work at 5 a.m. Given that the court record shows that his driver's license was suspended for 90 days beginning in February 2004 and his driving record does not reflect a different date, it is unclear why he received this ticket more than one year later. He acknowledges the ticket, the punishment, and his failure to notify the authorities about the change in his work schedule and to request a modification to his driving schedule. This reflects his honesty. In 2009, he drove on a suspended, not restricted, license to go to work in the very early morning hours. His decision reflects his choice involving a conflict between arriving at work as scheduled or following the mandate that he not drive a car while his license was suspended. Applicant complies with the rules at work, and he complied with the court mandates to attend alcohol education and counseling. His decision under these circumstances does not cast doubt on his reliability, trustworthiness, or good judgment. He has mitigated the security concerns about his rules violation under AG ¶ 17(c).

Guideline G, Alcohol Consumption

AG ¶ 21 expresses the security concern pertaining to 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 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent; and

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent.

Between 1993 and 2008, the police cited, arrested, and charged Applicant with five alcohol-related incidents. The first two alcohol-related incidents occurred when he was a minor. The remaining three incidents resulted from excessive drinking by Applicant. A security concern has been established under AG ¶¶ 22(a) and 22(c).

The Alcohol Consumption guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 23(a) through ¶ 23(d), and the following is potentially applicable:

(a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment.

Applicant has not been diagnosed as alcohol dependent or as an alcohol abuser. His first two citations occurred while he was with others, even though he was not consuming alcohol. Both times, the police cited him, along with others, because he was a minor in a situation where alcohol was present. After his 1998 alcohol incident, he met his wife and decided to change his drinking habits. Over the next ten years, he continued to consume alcohol, but not to excess except on two occasions. He readily participated in the alcohol education and counseling programs recommended by the court. From these programs, he acquired skills in managing his alcohol consumption. He seldom consumes alcohol now, and he and his wife agree that if one drinks at a party, the other will not, and will drive home. Applicant's current level of alcohol consumption does not indicate that he needs to seek alcohol counseling or attend AA meetings. He has decided to again participate in an alcohol education program as a preventive measure for any future problem. His past alcohol consumption and his current limited alcohol consumption reflect that he is acting responsibly about his alcohol use. There is little likelihood that his past and current alcohol use can subject him to coercion, duress, or exploitation. His alcohol use does not cast doubt on his current reliability, trustworthiness, or good judgment. Guideline G is found in favor of Applicant.

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to 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 the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

- (a) a single serious crime or multiple lesser offenses;
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted; and
- (d) individual is currently on parole or probation.

Applicant’s alcohol consumption or participation in alcohol-related events resulted in two DUI convictions and one public drinking conviction as well as two citations for under age possession. In 2008, the court placed him on probation for five years following his DUI conviction in October 2008. Applicant was still on probation at the time the SOR was issued. A security concern has been raised under AG ¶¶ 31(a), 31(c), and 31(d).

The Criminal Conduct guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 32(a) through ¶ 32(e), and the following are potentially applicable:

- (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, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

The record reflects a pattern of alcohol offenses, two of which occurred when he was a minor involved in alcohol-related activities with friends, but not actually consuming alcohol. Applicant’s last alcohol-related offense occurred over five years ago. Since his 2008 arrest and conviction, he has successfully completed court-mandated alcohol education and counseling and his probationary period. He reduced his alcohol consumption to an infrequent level. He prefers to spend his time with his family and in volunteer activities. He has a good work record and is highly valued by his employer and colleagues for his work ethic and integrity. On his own initiative, he decided to again attend alcohol education classes because he recognized a five-year pattern resulting in an alcohol incident which he does not wish to repeat. His alcohol consumption is responsible and under control. He has mitigated the security concerns raised by his past alcohol-related criminal conduct under Guideline J.

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 an applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant consumed alcohol to excess on occasions. His conduct resulted in three arrests over a 10 years. During this same time, he made decisions to change his drinking patterns and continues to reduce his consumption of alcohol. He attended alcohol education classes and counseling sessions from which he learned valuable information about alcohol usage. He recently decided to again attend alcohol education classes to reinforce his prior learning and decisions about the use of alcohol. He has not been diagnosed with alcohol dependence or as an alcohol abuse; thus, attendance or participation in AA has not been recommended nor is it needed. He generally acts responsibly about the use of alcohol and continues to seek support with his decisions about alcohol use. He focuses his activities on volunteering as a coach and at activities connected to his children and their schools. He successfully performs his work duties and is well respected by his work colleagues for his integrity and professionalism.

Applicant made poor decisions as a young adult. His decision-making has improved as he ages, and he continues to work towards better decision-making. He and

his supervisor developed a training program for his use and the use of his colleagues. The program addresses the criteria and issues which trigger a reportable incident for purposes of a security clearance. His supervisor and FOS provided him with remedial training to assure his compliance with reportable issues. He updates this training periodically. Applicant complies with the rules at work and has improved his compliance with the rules of society about alcohol use. His past conduct is not likely to be a source of coercion, duress, pressure, or exploitation by those who seek access to classified information.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his alcohol consumption, personal conduct, and criminal conduct under Guidelines E, G, and J.

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 E:	FOR APPLICANT
Subparagraphs 1.a-1.c:	For Applicant
Subparagraph 1.d:	Withdrawn
Subparagraphs 1.e-1.f:	For Applicant
Subparagraph 1.g:	Withdrawn
Subparagraphs 1.h-1.k:	For Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline J:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARY E. HENRY
Administrative Judge