



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-05681
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: Nathaniel J. Nazareth, Jr., Esquire

March 11, 2008

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant submitted his security clearance application (SF 86) on January 23, 2003. On August 23, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline J. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on August 28, 2007. With the assistance of his legal counsel, he answered the SOR in writing on September 7, 2007. On September 10, 2007, Applicant forwarded his Answer to DOHA and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on October 30, 2007. On November 8, 2007, I received the case assignment, and on December 6, 2007, I scheduled a hearing for January 22, 2008.

I convened the hearing on January 22, 2008, as scheduled. Six Government exhibits (Ex. 1-6) and three Applicant exhibits (A-C) were received into evidence without objection and Applicant testified, as reflected in a hearing transcript (Tr.) received by DOHA on February 5, 2008. At Applicant's request, the record was held open until February 25, 2008, for him to submit medical records. On February 20, 2008, Applicant forwarded statements from an employee assistance program (EAP) clinician and from his physician, which were admitted as Exhibits D and E respectively. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural and Evidentiary Rulings

Motion to Amend SOR

Following the taking of evidence, Department Counsel moved to amend the SOR by adding ¶ 1.p under Guideline J, alleging that Applicant was arrested in approximately April 2007 for disorderly conduct, for which he was sentenced to community service, and furthermore, to cross-reference the arrests set forth in SOR ¶ 1.a through ¶ 1.m and ¶ 1.o through ¶ 1.p under a new Guideline G. The motion was based on Applicant's hearing testimony. Applicant's counsel did not object and the SOR was amended. In accord with ¶ E3.1.17, Applicant was granted two weeks to file documents in response. He forwarded exhibits D and E on February 20, 2008. Department Counsel did not object to their admissibility and they were accepted into the record as full exhibits.

Findings of Fact

In the SOR as amended, DOHA alleged under Guideline J, criminal conduct, that Applicant was arrested 16 times between September 1978 and April 2007 for various offenses (operating under the influence of liquor, disorderly person, shoplifting, battery, assault and battery with a dangerous weapon, restraining order violation, harassing telephone calls, threatening, malicious destruction of property, domestic simple assault, domestic disorderly conduct, possession of marijuana). Applicant was alleged to have been convicted of several of the charges: November 1984 disorderly person (SOR ¶ 1.f); August 1987 restraining order violation, harassing telephone calls, and malicious destruction of property (SOR ¶ 1.g); November 1987 threatening and malicious destruction of property (SOR ¶ 1.h); late November 1987 assault and battery with a dangerous weapon and threatening (two counts) and January 1989 probation violation (SOR ¶ 1.i); June 1988 threatening and March 1989 warrant for probation violation (SOR ¶ 1.j); June 2002 domestic simple assault/battery and domestic disorderly conduct (SOR ¶ 1.n); January 2006 possession of marijuana (SOR ¶ 1.o); and about April 2007 disorderly person (SOR ¶ 1.p). DOHA alleged under Guideline G (SOR ¶ 2.a) that alcohol was a factor in all the offenses but the 2002 simple assault and disorderly conduct (SOR ¶ 1.n).

Applicant admitted the arrests and dispositions as alleged in SOR ¶¶ 1.a through 1.n, but indicated that others were at times culpable in some way (SOR ¶ 1.c, 1983

shoplifting—friend told him the beer was paid for; SOR ¶ 1.d, 1983 battery and disorderly conduct—cab driver verbally aggressive; SOR ¶ 1.f, 1984 disorderly person—friend had verbal confrontation with police officer; SOR ¶ 1.g, 1987 restraining order violation, harassing telephone calls, malicious destruction of property and SOR ¶ 1.h, threatening and malicious destruction of property—ex-girlfriend consistently harassed him; SOR ¶ 1.i, 1987 assault and battery and threatening—theft of alcohol from his home; SOR ¶¶ 1.k, 1.l, and 1.m threatening and abuse prevention act—ex-wife consistently filed complaints). Applicant attributed the June 1988 incident (SOR ¶ 1.j) to his abuse of alcohol, after which he received treatment and maintained sobriety until July 2002 (¶ 1.n). Applicant denied the disposition for the January 2006 marijuana possession charge (SOR ¶ 1.o), but volunteered that he had been arrested for disorderly in April or May 2007 (amended SOR ¶ 1.p). Applicant admitted that alcohol was involved in all the offenses but for SOR ¶ 1.n. After consideration of the evidence of record, I make the following findings of fact.

Applicant is a 48-year-old shipfitter in a defense contractor's apprenticeship program. He has worked for the company since February 2003, with the exception of a brief layoff from October 2006 to April 2007 (Tr. 36-37). He seeks to retain his security clearance (Tr. 48).

At age 19, Applicant was arrested for operating under the influence of liquor in September 1978. He had consumed a few beers before his arrest and failed field sobriety tests. The case was continued without a finding to late December 1979. On his successful completion of a drunk driving education program the charge was dismissed. Applicant denies he was intoxicated on that occasion but admits he felt "buzzed." (Tr. 49-51)

Applicant continued to drink alcohol. In February 1980, he married his first wife (Ex. 1). In January 1981, Applicant was arrested for disorderly person. Applicant does not recall the circumstances, but is sure he was intoxicated on that occasion (Tr. 53). The charge was continued without a finding until August 1981 and then dismissed. (Tr. 50-51)

In August 1983, Applicant was charged with shoplifting after he attempted to leave a convenience store with a case of beer. His companion had told him that it was paid for. Applicant was under the influence of alcohol at the time ("kind of two sheets that day," Tr. 54), and did not check with a cashier before leaving the premises. Adjudication was withheld. (Ex. 6, Tr. 53-55)

Applicant got into an altercation with a cab driver after drinking at an American Legion hall in September 1983. He recalls only that the cab driver became verbally aggressive when he cancelled the cab, and that he walked away after an argument. Applicant was charged with misdemeanor battery and with disorderly conduct. The charges were later dismissed. (Ex. 6, Tr. 55-58)

The Government alleged, and Applicant admitted that he was arrested in April 1984 for assault and battery with a dangerous weapon. Applicant was found not guilty of the offense, and the Government presented no evidence of culpability. Applicant believes he may have gotten into a fight with a friend but does not recall the specifics. (Tr. 59-60)

In late November 1984, Applicant and a companion were refused entry into a local nightclub. A verbal confrontation between the doorman and his companion followed, and Applicant was arrested for disorderly person after he refused to leave the premises when asked to do so. He was sentenced to two months in jail, suspended for one year, and he was placed on supervised probation. The charge was eventually dismissed after he completed the terms of his sentence. (Tr. 61-65) Applicant does not recall how much he had to drink that night but he is certain he was intoxicated (Tr. 62).

After Applicant and his first wife separated (they were divorced in September 1986), Applicant entered into a cohabitant relationship with his then girlfriend that turned sour (Tr. 66-67). Applicant was arrested twice in 1987 for threatening and/or harassment. In early August 1987, Applicant was arrested for violating a restraining order that his girlfriend had obtained, for harassing telephone calls, and for malicious destruction of property. He was convicted on all three counts and sentenced to three months in jail, suspended to January 1990 (Tr. 66-67). In early November 1987, Applicant was charged with threatening and malicious destruction of property. He was found guilty of both charges which were filed, although Applicant indicated in his answer that his ex-girlfriend had "consistently harassed [him] after breaking up." (Answer, Tr. 67)

On their divorce, Applicant's ex-wife was granted custody of their two children. The children were subsequently removed from her home by the department of social services and after working with social services for about a year, Applicant gained custody. (Tr. 78-80)

In late November 1987, Applicant was arrested for assault and battery with a dangerous weapon and threatening (two counts) after he confronted his teenage babysitter over suspected theft of alcohol from his home. Applicant was drunk at the time, and he got into a physical altercation with his babysitter's brother. He was convicted of all three counts and sentenced on the assault charge to three months in jail, suspended to January 1990, and ordered to make restitution. The other charges were filed. In January 1989, he was committed to the house of corrections for three months for violation of probation following another arrest. (Tr. 69-73)

In late June 1988, Applicant was involved in a bar room fight. He had a knife on him at the time and was arrested for assault and battery with a dangerous weapon and with threatening (Ex. 6, Tr. 74-75). He was found guilty of the threatening charge, placed on probation for one year, and ordered to pay court costs. Applicant was committed to an addiction treatment facility for 30 days after his arrest (Tr. 75-76). In

early March 1989, a warrant was issued for violation of his probation. He was sentenced to 60 days, suspended to July 1989, and his case was continued (Answer, Tr. 76).

In mid-March 1989, Applicant was charged with threatening on complaint of his ex-wife. Their divorce had not been amicable and he made "a lot of phone calls" as they argued over the children (Tr. 78-79). Two weeks later, Applicant was charged with violation of abuse prevention act. The threatening and abuse prevention act violation charges were both continued to June 21, 1989, and then dismissed. Applicant had been drinking before his arrest (Tr. 81).

Applicant married his second wife in May 1989 (Ex. 1). Following another complaint by his ex-wife, Applicant was charged with threatening in October 1989. A default warrant was issued. Applicant is sure he was drunk at the time (Tr. 81).

During his second marriage, Applicant "cleaned up his act" and was sober for almost 13 years. In July 2002, Applicant confronted his brother at a gas station about his brother's theft of \$3,000 from Applicant's home. The altercation escalated into punching and shoving by Applicant, and his brother struck Applicant's truck with a pole as Applicant departed. Applicant was charged with domestic assault (two counts) and domestic disorderly conduct. He was ordered to attend a domestic violence program consisting of 40 hours of classes, and placed on six months unsupervised probation. (Ex. 3, Ex. 5, Ex. 6, Tr. 81- 91) Applicant resumed drinking after this arrest (Tr. 86).

Before starting work for his current employer, Applicant completed a security clearance application (SF 86) on January 23, 2003. In response to question 26 concerning a record of any offenses within the past seven years not otherwise listed, Applicant disclosed he served six months probation for a July 2002 domestic disorderly offense. He responded "No" to question 24 concerning whether he had ever been charged with or convicted of any offenses related to alcohol or drugs (Ex. 1). He claims to have had no recall of several of the offenses (Tr. 52).

On August 26, 2003, Applicant was interviewed by a Defense Security Service (DSS) special agent about the July 2002 incident. Applicant explained that he had an altercation with his brother after confronting him about taking \$3,000 from his residence. He indicated he had obtained legal representation as he wanted his brother to pay for damaging his truck with a pole, but the "court did not pursue this matter apparently because we were brothers." Applicant denied the offense was alcohol or drug-related. (Ex. 3)

As of May 2004, Applicant was in an apprenticeship program at work to become a shipfitter. During his first month in the department, he consistently worked at a level higher than his peers and was given special projects. He continued to show initiative on the job, although subsequent performance ratings varied from one of the best to average. (Ex. B)

In about November 2005, Applicant came home from work to find that his wife had left him (Tr. 43, 102, 108).¹ He began drinking alcohol on weekends, at least six beers per occasion (Tr. 110-11) until January 2006, when his drinking again led to his arrest (Tr. 109). After consuming a few beers to “a buzz” at a bowling alley (Tr. 92), Applicant was stopped by the police in early January 2006 on report of a possible drunk driver. Applicant was observed repeatedly reaching down to his right side as the officer was talking to him. As Applicant exited his vehicle at the officer’s request, the police detected the scent of marijuana. A cellophane bag containing suspected marijuana was found between the driver’s seat and center console, and Applicant was arrested for possession of marijuana. He pleaded nolo contendere on advice of counsel. He was found guilty, fined, and placed on six months probation. Following an evaluation, he was not referred for further counseling. (Ex. 4, Tr. 91-98). Applicant reported the incident to his security office at work (Tr. 36). Applicant denies he used any marijuana on the occasion of his arrest or that he even knew it was there (Tr. 97-98). His claims his brother used his truck several times and that it must have been his (Tr. 97-98), but it is contradicted by police observation and Applicant’s testimony that he had not reconciled with his brother since the July 2002 incident (“the farthest that I’ve really done is we have talked a few times. But not really. It’s not the same.” Tr. 91).

After his arrest, Applicant stopped drinking. In October 2006, he was laid off from work (Tr. 110). During his layoff, he was interviewed on March 14, 2007, by a government investigator about his arrest for possession of marijuana in January 2006. Applicant averred he had been pulled over for a lane violation, and complied with a police request to search his vehicle “as he had nothing to hide.” Applicant acknowledged that the police had found a small bag containing marijuana in the seat, and that he pleaded nolo contendere in court to the possession charge. Yet he maintained that his brother had admitted to him in July 2006 that it was his marijuana as he had borrowed Applicant’s vehicle in the past. Applicant denied any use of marijuana other than a few times in high school in about 1977 and any intent to use marijuana in the future. (Ex. 2)

In March or April 2007, Applicant was recalled to work for the defense contractor (Tr. 110). He had been having financial problems, and excited at his recall, went out to celebrate with some friends. After drinking to intoxication at a bowling alley, Applicant was arrested for disorderly conduct (Tr. 29-30, 99-100, 110). He pleaded nolo contendere and was sentenced to 15 hours of community service. As of January 2008, Applicant had not reported this arrest to his employer (Tr. 36, 106).

¹The evidence is conflicting as to when his marriage ended. He gave the date of his divorce as 2006 (Tr. 101), but also testified his spouse left him in November 2006 (Tr. 108). In light of his subsequent testimony concerning his relapses (he drank after his wife left him until he got in trouble, he stopped drinking, he was then laid off, and celebrated his recall to work by drinking, Tr. 109-10) it is likely that his second wife left him in late 2005 rather than 2006. Applicant also testified that he was married in 1989 and they divorced after 16 1/2 years (Tr. 46), which is also consistent with a separation date in 2005 and divorce in 2006.

Since August 2007, Applicant began receiving the care of a doctor of osteopathy for treatment of "Depression and Addiction Problem" (Ex. E). Applicant has been seeing the physician weekly (Ex. E, Tr. 44, 104).

In January 2008, Applicant began counseling with an employee assistance program clinician. He had two sessions with the counselor by late January, due in part to the therapist being unavailable. Applicant has committed to attend the EAP sessions on a weekly basis for help with relapse prevention. (Ex. D)

Applicant considers himself an alcoholic, although to his knowledge he has never been diagnosed as alcohol dependent (Tr. 102). Applicant has attended Alcoholics Anonymous (AA) on and off for the past 20 years (Tr. 103). Applicant attended AA a couple of times in 2007, but none thereafter as he "did not want to believe that [he] needed to go." (Tr. 113). Applicant has not attended AA in the past 18 months (Tr. 113). As of January 2008, Applicant was not consuming any alcohol and did not plan on drinking in the future (Tr. 43-44).

Sometime after he arrested Applicant in January 2006, the police officer began a personal relationship with a member of Applicant's family. He has observed Applicant to be a family man quick to lend a hand to others. (Ex. A)

Applicant's direct supervisor attests to Applicant being polite and a hard worker who has never caused him any problems at work. (Ex. C)

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching adjudicative goal is a fair, impartial and common sense 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to 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 the 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.

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 J, Criminal Conduct

The security concern relating to the guideline for criminal conduct is set out in AG ¶ 30: “Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations.” Applicant was arrested 16 times between September 1978 and April 2007 for offenses related to alcohol and/or anger management issues. With the exception of the April 1984 assault and battery charge (¶ 1.e), the evidence proves some culpability on Applicant’s part, even when charges were dismissed or adjudication withheld. He failed field sobriety tests when arrested for DUI in September 1978 (¶ 1.a), and was intoxicated when arrested for disorderly conduct in January 1981 (¶ 1.b), and for shoplifting in August 1983 (¶ 1.c). He admits he argued with a cab driver in September 1983 (¶ 1.d) after drinking, and was sentenced to two months (suspended) for the November 1984 disorderly conduct outside the nightclub (¶ 1.f). He was convicted of assault, threatening, malicious destruction, and harassing phone call charges in 1987 and 1988 (¶¶ 1.g, 1.h, 1.i, and 1.j). While the 1989 threatening charges were dismissed (¶¶ 1.k, 1.l, and 1.m), he admits he made several telephone calls to his ex-wife while under the influence of alcohol. He was placed on six months probation and required to complete a domestic violence program for domestic

assault and disorderly charges involving his brother in July 2002 (¶ 1.n), and despite his denials of ownership, the evidence and the finding of guilty support my conclusion that he had marijuana in his possession in January 2006 (¶ 1.o). More recently, he drank to intoxication to celebrate his recall to work in April 2007 resulting in his arrest for disorderly conduct (¶ 1.p). Security concerns are implicated under AG ¶ 31 (a) (“a single serious crime or multiple lesser offenses”) and ¶ 31(c) (“allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted”). Furthermore, since his June 1988 threatening offense was in violation of his probation for the November 1987 assault, AG ¶ 31(e) (“violation of parole or probation, or failure to complete a court-mandated rehabilitation program”) also applies.

AG ¶ 32 (c) (“evidence that the person did not commit the offense”) applies, but mitigates only of the April 1984 charge of assault and battery with a dangerous weapon (¶ 1.e). An evaluation of his criminal conduct shows no recurrence of the threatening or assaultive behavior since he completed the domestic violence program in 2002/03. Yet Applicant continued to allow his use of alcohol to cloud his judgment with negative legal consequences, raising significant doubt about whether he can be counted on to abide by rules and regulations. His January 2006 marijuana possession and April 2007 alcohol-related disorderly conduct are too recent to apply AG ¶ 32(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”). It is especially troubling that Applicant was involved with illegal drugs at age 46 and after he had applied for a security clearance. He exhibits little reform where he continues to deny any knowing possession of marijuana in the face of a police report showing Applicant kept reaching for the area where the marijuana was found, and by blaming his ex-girlfriend, his ex-wife, and even a cab driver for his threatening and/or abusive behavior.

Guideline G, Alcohol Consumption

The security concern relating to the guideline for alcohol consumption is set out in AG ¶ 21: “Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and untrustworthiness.” By Applicant’s admission, alcohol was involved in his criminal behavior excepting the July 2002 assault offense (SOR ¶ 1.n). AG ¶ 22(a) (“alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent”), applies.

Applicant expressed his personal belief that he is an alcoholic, but it is not sufficient to establish a diagnosis of alcohol dependence that would require consideration of AG ¶ 22(d) (“diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence”). An osteopathic physician certified that Applicant has been under his care

for “Depression and Addiction Problem.” A diagnosis of dependence by his osteopathic physician would require a showing of abstinence to satisfy either AG ¶ 23(b) (“the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser)”) or ¶ AG 23(d) (“the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program”). The physician’s use of the vernacular “addiction problem” certainly suggests dependency, but it is not clear whether the physician was making a well-informed diagnosis, generalizing based on what Applicant told him about his past drinking, or simply repeating Applicant’s untrained characterization of his problem. The medical records of Applicant’s treatment with the physician were not made available for review. The fact that Applicant had been drinking before so many criminal incidents tends to indicate an alcohol abuse problem at a minimum.

Irrespective of whether Applicant suffers from an alcohol abuse or an alcohol dependency problem, it is too soon to conclude that his alcohol problem is safely in the past. Applicant testified, and the absence of any alcohol-related incident from 1989 to 2006 confirms, that he maintained a sustained period of sobriety. However, this did not prevent him from relapsing into abusive drinking in about November 2005 when his spouse left him. He drank on weekends, in quantity of at least six beers per occasion, which he claims was not enough for him to become intoxicated (Tr. 110-11). After his January 2006 arrest for marijuana possession, Applicant apparently did not drink until April 2007, when he went out to celebrate his recall to work. His irresponsible consumption, well after he had applied for his security clearance, raises significant judgment concerns. Applicant is credited with seeing his physician weekly since August 2007, and with committing himself to sessions with an EAP counselor. AG ¶ 23(b) applies in part because of these recent actions to deal with his alcohol problem, but not enough is known about Applicant’s treatment with his physician, who merely confirmed that he has been seeing Applicant regularly since August 2007. Although the focus of his therapy with the EAP clinician is relapse prevention (Ex. D), Applicant has been to only two sessions due to Applicant rescheduling twice and the clinician’s absence for three weeks. Applicant also testified, with no rebuttal from the Government, that he has been abstinent since his last arrest for disorderly conduct in April 2007. In light of his abuse history, this is not long enough to enable the predictive judgment that his alcohol abuse is not likely to recur. Furthermore, while Applicant testified to his belief that he is an alcoholic, his testimony that he was not drunk after consuming six beers casts doubt about whether he has adequate insight into his alcohol problem. None of the other mitigating conditions apply.

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(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) 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's reliability and dedication at work are not enough to overcome the criminal conduct and alcohol consumption concerns, given the domestic violence and substance abuse problems that resurfaced after more than a decade of responsible behavior. It is not clearly consistent with the national interest at this time to grant or continue a clearance for Applicant.

Formal Findings

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

Paragraph 1, Guideline J:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant

Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

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

ELIZABETH M. MATCHINSKI
Administrative Judge