



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



In the matter of:)
)
 ---) ISCR Case No. 14-06160
)
 Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esquire, Department Counsel
For Applicant: *Pro se*

06/06/2016

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding criminal conduct and personal conduct considerations. Eligibility for a security clearance and access to classified information is denied.

Statement of the Case

On March 26, 2009, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.¹ On April 4, 2014, he submitted another e-QIP.² On May 30, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him, under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information*

¹ Item 4 (First e-QIP, dated March 26, 2009).

² Item 3 (Second e-QIP, dated April 4, 2014).

(December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guidelines J (Criminal Conduct) and E (Personal Conduct), and detailed reasons why the DOD CAF was unable to make an affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

It is unclear when Applicant received the SOR as there is no receipt in the case file. In a statement notarized June 9, 2015, Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing.³ A complete copy of the Government's file of relevant material (FORM) was provided to Applicant on January 8, 2016, and he was afforded an opportunity, within a period of 30 days after receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Guidelines applicable to his case. Applicant received the FORM on January 15, 2016. A response was due by February 14, 2016. As of May 31, 2016, the Defense Office of Hearings and Appeals (DOHA) had not received a response to the FORM. The case was assigned to me on March 31, 2016.

Findings of Fact

In his Answer to the SOR, Applicant admitted all of the factual allegations pertaining to criminal conduct (§§ 1.a. through 1.d.) in the SOR. With regard to the allegations pertaining to personal conduct, Applicant failed to address one (§ 2.a.) and admitted in part and denied in part the remaining allegation (§ 2.b.) After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 29-year-old employee of a defense contractor. He has been serving as an electronics technician with his current employer since July 2007.⁴ A 2005 high school graduate, Applicant continued his education and received his associate's degree in 2007 and his bachelor's degree in 2010.⁵ He has never served with the U.S. military.⁶ He was granted a secret security clearance in July 2010.⁷ He has never been married.⁸

³ Item 2 (Applicant's Answer to the SOR, dated June 9, 2015).

⁴ Item 3, *supra* note 2, at 11.

⁵ Item 3, *supra* note 2, at 9-11.

⁶ Item 3, *supra* note 2, at 15.

⁷ Item 3, *supra* note 2, at 30-31.

⁸ Item 3, *supra* note 2, at 17.

Criminal Conduct⁹

Applicant has a substantial history of conduct as a justice-involved individual, commencing in April 2007, when he was 20 years old, and continuing through at least April 2013. Included in that history are various incidents, mostly fueled by his consumption of alcohol, which led to arrests and charges, as well as at least one citation for a traffic infraction. The SOR alleged four such incidents:

(SOR ¶ 1.d.): In April 2007, while in a university town with his brother, sister, and a cousin, Applicant attended a party and consumed five or six beers over a five-hour period. Applicant acknowledged that he was slightly intoxicated by the time they departed the party. Applicant's cousin had a beer in his hand while the group was walking down the street. The police stopped them and requested that they display their identification. Applicant was scared, and he initially produced the identification of another person (henceforth referred to as a fake ID) that his cousin had previously furnished him. The police officers noted that the identification was not Applicant's, and they requested the real identification, which Applicant promptly produced.

Applicant was charged with (1) use of the driver's license of another, a misdemeanor; (2) liquor under 21 and any liquor in body, a misdemeanor; and (3) false report to law enforcement, a misdemeanor. After spending the night in a holding cell, Applicant appeared before a judge and was ordered to: undergo an alcohol evaluation with a court-appointed counselor; complete one weekend of alcohol education; pay a fine; and prepare a written report about the dangers of consuming alcohol. Applicant completed all of the requirements, and the charges against him were eventually dismissed.¹⁰

In April 2009, Applicant discussed the incident with an OPM investigator. Applicant explained that the alcohol-education class was very beneficial. He decided to abstain from drinking alcohol until he turned 21. Since that time, Applicant stated that he "drinks alcohol responsibly" when he has four or five mixed drinks when socializing with friends at bars. He also stated that he does not drive after consuming alcohol.¹¹

(SOR ¶ 1.c.): In November 2010, Applicant and a former cohabitant each consumed six or seven beers at a party at her residence or a bar. The party ended around 2 a.m. Applicant acknowledged that both his friend and he were intoxicated. A situation arose that brought the police to the residence. Applicant's version of the events differs substantially from that of the police. According to Applicant, when his friend found a telephone number of

⁹ General source information pertaining to Applicant's criminal conduct discussed below can be found in the following exhibits: Item 2, *supra* note 2; Item 3, *supra* note 2; Item 4, *supra* note 1; Item 5 (Federal Bureau of Investigation (FBI) Identification Record, dated April 12, 2014); Item 6 (Police File, various dates pertaining to a 2013 incident); Item 6 (Police File, various dates pertaining to a 2010 incident); Item 7 (Personal Subject Interview, dated April 29, 2014); Item 8 (Personal Subject Interview, dated April 29, 2009).

¹⁰ Item 8, *supra* note 9, at 1-2; Item 5, *supra* note 9, at 2. Applicant offered two different descriptions of the events surrounding the incident. The initial description appears above, and as it was the one closest to the event, I have concluded that it is the more reliable of the two. The more recent description was given during an investigation conducted by the U.S. Office of Personnel Management (OPM) in April 2014. In his statement, Applicant did not recall the quantity or nature of the alcohol consumed; the reason for being stopped by the police; or if he had to pay a fine or receive alcohol counseling, treatment, or education. See Item 7, *supra* note 9, at 8-9.

¹¹ Item 8, *supra* note 9, at 2.

another female in Applicant's cell phone, she confronted Applicant and struck him in the face. He purportedly asked her how she would feel if he struck her, or words to that effect. He said that she went into her bedroom and called the police. When he noted the arrival of the police, he went to the door to open it for them, but they burst through the door and struck him in the face. He was arrested. Applicant denied having resisted arrest or attempting to assault the police officers.¹²

The version of the events reported by the police commenced before the arrest. At approximately 1:30 a.m., police officers were dispatched to the residence because of a reported verbal argument. Upon their arrival, Applicant was sitting on the curb, and he denied the situation with his friend had turned physical. Applicant was given the opportunity to call a taxi or walk to his parents' nearby residence. The police watched as Applicant initially walked in the right direction but later changed directions. They again approached him to convince him to continue to his parents' house. Applicant wanted to drive his vehicle to the house but was told he was too intoxicated to do so. Although he uttered some nasty comments to the police, they overlooked his statements and allowed him to leave.

Approximately one hour later, the police, including some of the same police officers from earlier that morning, were again dispatched to the girlfriend's residence because Applicant had returned to the residence, broken a window, and made entry into the house. When the officers entered the front door, Applicant was in the living room and positioned himself in a fighting stance. He ignored police orders to get down on the couch or ground, and he tried to avoid being handcuffed. When the police tried to take him into custody, Applicant lunged at, and grabbed one officer around the waist, and lifted him off the ground. Applicant threatened one officer and said: "I know a guy in Mexico that will come up and kill you." After some more physical interplay with two officers, Applicant was finally subdued.¹³

Following the incident, Applicant was initially charged with (1) aggravated assault of an officer, a felony; (2) two counts of disorderly conduct – fighting, a misdemeanor; and (3) threatening and intimidating with injury or damage to property, a misdemeanor.¹⁴ According to an incident/investigation supplemental report, the county attorney reviewed the case and turned down the felony charge of aggravated assault because of "inadequate evidence of intent," and recommended the remaining charges be filed through the city court.¹⁵ The FBI Identification Record reported that no complaint was filed for the charges of aggravated assault or the two counts of disorderly conduct. The status of the threatening and intimidating with injury or damage to property charge is unclear, for in one section it says no complaint was filed but in another section it says that Applicant was found guilty, fined an unspecified amount, and placed on probation for the period of two years.¹⁶ It appears that the county attorney's recommendations were followed, and the charges were filed in the city court. Applicant acknowledged that he entered a plea of guilty for one misdemeanor charge,

¹² Item 7, *supra* note 9, at 7.

¹³ Item 6 (2010 event), *supra* note 9.

¹⁴ Item 5, *supra* note 9, at 2.

¹⁵ Item 6 (2010 event), *supra* note 9.

¹⁶ Item 5, *supra* note 9, at 2.

but he could not recall which one, and the remaining charges were dismissed. He confirmed that he had paid a fine and attended an alcohol-education class, but he did not recall any probation being imposed.¹⁷

In April 2014, Applicant discussed the incident with an OPM investigator. Applicant explained that he considered the incident to be an isolated one and not part of any pattern. He stated that he intends to maintain control of himself in the future to ensure that such behavior does not recur.¹⁸

(SOR ¶ 1.b.): In February 2013, Applicant was issued a photo-radar traffic citation for speeding, not reasonable and prudent. The original fine was \$250, but because Applicant failed to address it in a timely manner, the fine increased to \$310. He eventually paid the increased fine. Under the state law which was violated, Applicant's action was merely a civil traffic violation for which he received a civil penalty. It is not considered a criminal violation.¹⁹

During his April 2014 OPM interview, Applicant discussed the incident with the OPM investigator. As a result of his experience, he claimed to have become more aware of traffic laws. He denied intentionally violating the traffic laws, but conceded that he was not paying attention at the time of the incident. He considered the incident to be an isolated one and did not foresee any recurrence.²⁰

(SOR ¶ 1.a.): In April 2013, Applicant and a male friend were at a bar where Applicant consumed, what he estimated to be two beers within two hours. According to Applicant, another individual approached Applicant's companion and commenced a verbal confrontation. Applicant said he stood up and was struck in the face one time. Applicant denied fighting back. The police were called, but when they arrived, Applicant was angered when they refused to arrest his assailant. He was ordered to be quiet when he objected. He added that the police departed the bar with no further action being taken. He indicated that he subsequently received a citation in the mail which cited him for disorderly conduct.²¹

Applicant's version of the events differs substantially from that of the police. According to witnesses at the bar, Applicant and his companion were very flirtatious with the female patrons as well as very loud and obnoxious. At one point, Applicant yelled a derogatory racial slur at one of the patrons, and that patron got up from his table and struck Applicant in the face. The combatants were ordered to leave the bar. When the police arrived, witnesses were separately interviewed. Applicant became loud, disturbed various patrons, and disturbed the police investigation. He was handcuffed. A bar surveillance video was reviewed and confirmed the witness' description of the event. Applicant was charged with disorderly conduct (uses abusive or offensive language or gestures to any person present in a manner likely to provoke immediate physical retaliation by such person), a

¹⁷ Item 7, *supra* note 9, at 7-8.

¹⁸ Item 7, *supra* note 9, at 8.

¹⁹ Item 7, *supra* note 9, at 13.

²⁰ Item 7, *supra* note 9, at 13.

²¹ Item 7, *supra* note 9, at 5.

misdemeanor. The other combatant was charged with assault, a misdemeanor. Applicant entered a plea of guilty to the charge. He was ordered to attend anger-management classes and was fined \$300. The classes took place on a weekly basis for 17 weeks in a group setting.²²

During his April 2014 OPM interview, Applicant discussed the incident with the OPM investigator. As a result of his experience, he claimed he no longer goes to bars to insure no recurrence of this type of conduct. He considered this incident to be an isolated one, and did not foresee any recurrence.²³ However, Applicant acknowledged that he continues to consume two to three beers twice a month at home, bars, or restaurants, and that he drinks to intoxication, which he estimated to be four or five beers, three times per year. He contended that when he consumes alcohol he becomes quiet, but not violent.²⁴

Personal Conduct

In March 2009, when Applicant completed his First e-QIP, he responded to some questions pertaining to his police record. The questions in § 22 asked if, in the last seven years he had been arrested by any police officer, sheriff, marshal, or any other type of law enforcement officer; and if he had ever been charged with any offenses related to alcohol or drugs. Applicant answered both questions with “yes.” He reported that in May 2006 he was charged with underage drinking, and that the charge was dropped. He attempted to minimize the actual facts, because Applicant was actually charged with (1) use of the driver’s license of another, a misdemeanor; (2) liquor under 21 and any liquor in body, a misdemeanor; and (3) false report to law enforcement, a misdemeanor. Applicant appeared before a judge and was ordered to: undergo an alcohol evaluation with a court-appointed counselor; complete one weekend of alcohol education; pay a fine; and prepare a written report about the dangers of consuming alcohol. Applicant completed all of the requirements, and the charges against him were dismissed.

(SOR ¶ 2.b.): In April 2014, when Applicant completed his Second e-QIP, he responded to similar questions pertaining to his police record. The questions in § 22 asked if, in the last seven years: he had been issued a summons, citation, or ticket to appear in court in a criminal proceeding against him; he had been arrested by any police officer, sheriff, marshal, or any other type of law enforcement officer; and he had been charged, convicted or sentenced of a crime in any court. Applicant answered the questions with “yes.” He reported that in July 2013 he was charged with disorderly conduct by being loud in a public place. He acknowledged that he was arrested, convicted, and fined \$500.²⁵ He certified that the response was “true, complete, and correct” to the best of his knowledge and belief.

²² Item 7, *supra* note 9, at 7; Item 6 (2013 incident), *supra* note 9, at supplemental notes, dated April 28, 2013. Although the Incident/Investigation Report, dated April 21, 2013, reflects three victims (Applicant, the bar, and the other combatant), two offenders (Applicant and the other combatant), and three offenses (assault–touched to injure, disorderly conduct-language and gesture, and disorderly conduct-fighting) there is no indication which charge was made to individual offenders. See Item 6 (2013 incident), *supra* note 9, at incident/investigation report, at 1.

²³ Item 7, *supra* note 9, at 6.

²⁴ Item 7, *supra* note 9, at 9.

²⁵ Item 3, *supra* note 2, at 27-29.

Applicant's response to the questions were false and incomplete, for Applicant omitted and concealed his 2007 charges of (1) use of the driver's license of another; (2) liquor under 21 and any liquor in body; and (3) false report to law enforcement; his initial 2010 charges of (1) aggravated assault of an officer; (2) two counts of disorderly conduct – fighting; and (3) threatening and intimidating with injury or damage to property; and the eventual 2010 charge of threatening and intimidating with injury or damage to property. He also failed to report the various sentences he received from the judges for those criminal actions.

In his Answer to the SOR, Applicant denied intending to falsify the responses to the questions and claimed he had simply misunderstood the questions. He stated that when the question asked of what he was convicted, he understood it to ask of what he was found guilty. He added that “some of these items that have come up do not directly reflect the person [he is] now. [He] was a very young kid, and very irresponsible. [He has] changed a great amount. . . .”²⁶

(SOR ¶ 2.a.): The SOR also alleged that the allegations set forth in SOR ¶¶ 1.a. through 1.d. constituted personal conduct concerns.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.”²⁷ As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”²⁸

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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. The entire process is a conscientious scrutiny of a number of

²⁶ Item 2, *supra* note 2, at 2.

²⁷ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

²⁸ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

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 meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”²⁹ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.³⁰

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 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. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”³¹

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”³² Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. 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.

²⁹ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

³⁰ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

³¹ *Egan*, 484 U.S. at 531

³² See Exec. Or. 10865 § 7.

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.”

The guideline notes several conditions that could raise security concerns. Under AG ¶ 31(a), “a single serious crime or multiple lesser offenses” is potentially disqualifying. Similarly, under AG ¶ 31(c), if there is an “allegation of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted,” security concerns may be raised. Applicant’s history of criminal conduct, over a seven-year period, consists of three alcohol-related incidents involving criminal charges, arrests, convictions, and dismissals, for a variety of actions. Applicant’s one alleged traffic offense is not considered a criminal violation. As to the three alcohol-driven criminal incidents, AG ¶¶ 31(a) and 31(c) have been established.

The guidelines also include examples of conditions that could mitigate security concerns arising from criminal conduct. Under AG ¶ 32(a), the disqualifying condition may be mitigated where “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.” Similarly, AG ¶ 32(d) may apply when “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.”

AG ¶¶ 31(a) and 32(a) and 32(d) partially apply. Applicant’s three incidents of criminal conduct occurred over a seven-year period, with the most recent incident occurring in April 2013. Those incidents had one common theme, and that was Applicant’s consumption of alcohol. The earliest incident occurred when he was an under-age drinker who produced a fake ID to a police officer, and the other two incidents involved his alcohol-fueled aggression towards police officers and either a bar patron or his former girlfriend. The February 2013 speeding violation was not a crime, but merely a civil infraction, and is relatively insignificant. As a result of his conduct, Applicant went to jail and to court: he underwent alcohol education with a court-appointed counselor, wrote a report about the dangers of consuming alcohol, and paid a fine in 2007; he attended another alcohol-education program and paid a fine in 2010; and he attended anger-management classes and paid a fine in 2013. Regardless of the disposition of the charges or the punishment ordered, Applicant continued consuming alcohol in quantities that resulted in his criminal behavior.

Following the 2007 incident, Applicant stated that he “drinks alcohol responsibly” when he has four or five mixed drinks – the same quantity that he previously acknowledged made him intoxicated – when socializing with friends at bars. He also

stated that he does not drive after consuming alcohol. After the 2010 incident, Applicant explained that he considered the incident to be an isolated one and not part of any pattern. He stated that he intends to maintain control of himself in the future to ensure that such behavior does not recur. Subsequent to the 2013 incident, Applicant again considered the incident to be an isolated one, and he claimed he no longer goes to bars to insure no recurrence of that type of conduct.

Contrary to Applicant's claims, his alcohol-fueled criminal conduct is not a string of isolated incidents. Furthermore, after all of the arrests, charges, and court actions, Applicant's periodic return to criminal activity reflects evidence of unsuccessful rehabilitation. His minimization of the facts related to each incident, either to the police or in his e-QIP, reflect insufficient evidence of remorse. There is no evidence of a good employment record or of constructive community involvement. Those factors, added to his failure to recognize the negative impact alcohol has had on him, and his refusal to abstain from further alcohol consumption, raise the likelihood that additional criminal conduct will recur, and they cast doubt on Applicant's reliability, trustworthiness, or good judgment.

While there is evidence that certain charges have been dismissed or otherwise not prosecuted, those dismissals and non-prosecutions do not, without substantially more, necessarily reflect that Applicant did not commit the individual offenses charged. Generally, the passage of time without recurrence of additional criminal activity can be construed as some evidence of successful rehabilitation. However, in this instance, the criminal activities have continued over time. While a person should not be held forever accountable for misconduct from the past, in this instance the past is relatively recent, and the concerns about future criminal conduct are continuing.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out 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 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.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 16(a), it is potentially disqualifying if there is

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.

Under AG ¶ 16(c), it is potentially disqualifying if there is

credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

Under AG ¶ 16(e), it is also potentially disqualifying if there is

personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing. . . .

Applicant's three alcohol-fueled criminal incidents in 2007, 2010, and 2013 involved high-risk, immature, and possibly impulsive behavior that got him into trouble with the police. Aside from his under-age drinking in 2007, Applicant produced a fake ID to a police officer. In 2010, he broke into a house, eventually attacked a police officer, uttered nasty comments to the police, verbally threatened a police officer, and resisted arrest. In 2013, he was very loud and obnoxious towards other bar patrons, and he uttered a derogatory racial slur at one patron. Applicant was struck in the face by the other patron, and they were ejected from the bar. Applicant disrupted the police investigation. While individuals may mature and become more even-tempered and responsible as they mature, enter the work force and take on added responsibilities, Applicant has offered little evidence reflecting such maturity. Instead, he has either failed to report significant facts, or he minimized the nature and facts of the incidents when discussing them and reporting them.

In March 2009, when Applicant completed his First e-QIP, he attempted to minimize the actual facts by acknowledging underage drinking, but omitting the use of a fake ID. That omission was not alleged in the SOR, but is referred to here only as evidence of an established pattern of conduct by Applicant. In April 2014, when he completed his Second e-QIP, he again attempted to minimize or conceal the actual facts by acknowledging the 2013 disorderly conduct, but omitting the 2010 incident in its entirety, as well as the other two 2013 charges. Applicant denied intending to falsify the responses to the questions and claimed he had simply misunderstood the questions. His explanation is difficult to accept. Considering Applicant's history of minimizing and concealing the true facts pertaining to his criminal conduct and personal conduct, his explanation is rejected. AG ¶¶ 16(a), 16(c) and 16(e) have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct, but none of those mitigating conditions apply. His conduct shows a lack of honesty and integrity. It is also recent and serious. In the

absence of some significant emotional and attitudinal changes by Applicant, it appears that such overall behavior is likely to recur.

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) 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. Moreover, I have evaluated this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.³³

There is some evidence in favor of mitigating Applicant's conduct. He has been with his current employer since July 2007. He has both an associate's degree and a bachelor's degree. He was granted a secret security clearance in July 2010.

The disqualifying evidence under the whole-person concept is more substantial. Applicant is a justice-involved individual whose history of criminal conduct took place over a seven-year period. Included in that history are various incidents, mostly fueled by his consumption of alcohol, which led to criminal charges, arrests, convictions, and dismissals, for a variety of actions. His relations with the police officers have not been good. He has furnished a fake ID to police officers; cursed at, and threatened, police officers; assaulted a police officer; resisted arrest; disturbed a police investigation; misrepresented the true facts pertaining to his criminal incidents; and claimed that his experiences, including the incidents and his court-mandated alcohol education and anger management classes have been beneficial. He claims to have changed, but he has not furnished any evidence, other than his own statements, that those changes actually took place. He also unrealistically contends that each of his incidents of criminal conduct was an isolated incident. All of the above, when added to his minimizing the significance of alcohol on his conduct, raises the likelihood that additional criminal conduct will recur. The combination of Applicant's actions, explanations, and beliefs

³³ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

cast doubt on Applicant's reliability, trustworthiness, and good judgment. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	For Applicant
Subparagraph 1.d.:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.:	Against Applicant
Subparagraph 2.b.:	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.

ROBERT ROBINSON GALES
Administrative Judge