DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 19-01109
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Christopher Morin, Esq., Department Counsel
For Applicant: *Pro se*
10/25/2019

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Decision

_____

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant resigned from a job in March 2014 after testing positive for alcohol on the job in violation of his then-employer's policy. He was not completely candid on his September 2017 security clearance application about the circumstances that led to his resignation. A June 2019 arrest for public intoxication and outstanding delinquencies exceeding $50,000 also cast doubt on his judgment, reliability, and trustworthiness. Clearance is denied.

Statement of the Case

On April 17, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline E, personal conduct, and Guideline F, financial considerations. The SOR explained why the DOD CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive);

and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective within the DOD on June 8, 2017.

On May 14, 2019, Applicant responded to the SOR allegations and requested a decision based on the written record without a hearing by an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On June 4, 2019, the Government submitted a File of Relevant Material (FORM), consisting of eight exhibits (Items 1-8). DOHA forwarded a copy of the FORM to Applicant on June 7, 2019, and instructed him to respond within 30 days of receipt. Applicant received the FORM on June 25, 2019. No response to the FORM was received by the July 25, 2019 deadline. On August 16, 2019, the case was assigned to me to determine whether it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant. I received the case file on August 21, 2019.

Evidentiary and Procedural Rulings

On August 26, 2019, Department Counsel moved to amend the SOR to allege Guideline G, alcohol consumption, security concerns under a new paragraph 3, as follows:

> a. On or about March 28, 2014, you resigned from [employer name omitted] after testing positive for alcohol that same day, and facing automatic termination pursuant to company policy.
>
> b. On about June 26, 2019, you were arrested for public intoxication and transported to jail. You paid a fine of $370.00 and were released.

Department Counsel also moved to supplement the record to include as Item 9 in the FORM an incident history record. Acting under the authority of DOD Directive ¶¶ E3.1.10 and E3.1.17, on August 27, 2019, I granted the motion and amended the SOR as alleged. The conduct alleged in SOR ¶ 3.b occurred after the SOR was issued. Applicant was directed to either admit or deny the allegations in SOR ¶¶ 3.a and 3.b within 20 days of his receipt of the amendment. He was granted 30 days to submit further information in response, including supporting documentation. Applicant confirmed his receipt of the amendment containing the new allegations and a copy of proposed Item 9 on August 28, 2019. On September 13, 2019, he responded to SOR ¶ 3.b, as follows:

> I admit to the charge of being arrested for public intoxication on June 24, 2019. I pleaded no contest and paid the fine and was released.

Applicant did not answer SOR ¶ 3.a. On September 16, 2019, I advised him that because SOR ¶ 3.a alleged the same facts under Guideline G as SOR ¶ 1.a under Guideline E, which he had previously admitted, I assumed he was admitting SOR ¶ 3.a unless he notified me otherwise. I reminded him that he had until September 27, 2019, to file any objections or comment to Item 9 and submit any documentation on his behalf. Applicant did not respond to SOR ¶ 3.a or submit any objections to Item 9 by the

September 27, 2019 deadline. Accordingly, Item 9 was incorporated in the FORM without any objections. He also did not submit any additional information on his behalf, and so the record closed on September 27, 2019.

Department Counsel submitted as part of Item 4 of the FORM a summary report of Applicant's Personal Subject Interview (PSI) conducted on May 8, 2018, and May 15, 2018. The summary report was part of the DOD Report of Investigation (ROI) in Applicant's case. Under ¶ E3.1.20 of the Directive, a DOD personnel background report of investigation may be received in evidence and considered with an authenticating witness, provided it is otherwise admissible under the Federal Rules of Evidence. The summary report did not bear the authentication required for admissibility under ¶ E3.1.20.

In ISCR Case No. 16-03126 decided on January 24, 2018, the Appeal Board held that it was not error for an administrative judge to admit and consider a summary of personal subject interview where the applicant was placed on notice of his or her opportunity to object to consideration of the summary; the applicant filed no objection to it; and there is no indication that the summary contained inaccurate information. In this case, Applicant was provided a copy of the FORM and advised of his opportunity to submit objections or material that he wanted the administrative judge to consider. In the FORM, Applicant was advised as follows:

> **IMPORTANT NOTE FOR APPLICANT – Applicant was not given an opportunity to review and authenticate this summary document (Item 4) prior to issuance of the SOR. The Government acknowledges that, under ¶ E3.1.20 of Enclosure 3 of Directive 5220.6, Applicant can object to its admissibility on this ground. The Government also acknowledges that some of the information contained therein may not be entirely correct, or up to date. Applicant is therefore free to correct, revise or update the information in any Response to this filing, as well as to pose an objection to its admissibility. Moreover, while Applicant's interview may add some details regarding his conduct, all facts alleged in the SOR are also proven and discussed elsewhere in this FORM.** (Emphasis in original).

Concerning whether Applicant understood the meaning of authentication or the legal consequences of waiver, Applicant's *pro se* status does not confer any due process rights or protections beyond those afforded him if he was represented by legal counsel. He was advised in ¶ E3.1.4 of the Directive that he may request a hearing. In ¶ E3.1.15, he was advised that he is responsible for presenting evidence to rebut, explain, or mitigate facts admitted by him or proven by Department Counsel and that he has the ultimate burden of persuasion as to obtaining a favorable clearance decision. While the Directive does not specifically provide for a waiver of the authentication requirement, Applicant was placed on sufficient notice of his opportunity to object to the admissibility of the interview summary report, to comment on the interview summary, and to make any corrections, deletions, or updates to the information in the report. He did not respond to the FORM. In the absence of any objections or indication that the summary report of his PSI contains inaccurate

information, I accepted the PSI in evidence, subject to issues of relevance and materiality in light of the entire record.

Summary of Pleadings

The amended SOR alleges under Guideline E that Applicant failed a random drug and alcohol screening test administered by his then employer in March 2014 and resigned to avoid automatic termination (SOR ¶ 1.a). Applicant also allegedly falsified his September 2017 Electronic Questionnaires for Investigations Processing (e-QIP) in two aspects, i.e., he misrepresented the reason why he resigned from his employment in March 2014 (SOR ¶ 1.b) and denied that he had been fired, quit after being told he would be fired, or he left by mutual agreement following allegations or charges of misconduct in the last seven years (SOR ¶ 1.c). Under Guideline F, Applicant is alleged to owe charged-off or collection debts totaling $56,744 on 16 accounts (SOR ¶¶ 2.a-2.p). Applicant's March 2014 employment resignation after testing positive for alcohol (SOR ¶ 3.a) and a June 2019 arrest for public intoxication (SOR ¶ 3.b) are alleged under Guideline G.

When Applicant answered the SOR allegations, he admitted that he failed the random drug and alcohol screening test in March 2014 and that he resigned from that job rather than face automatic termination. He denied that he falsified his September 2017 e-QIP by indicating thereon that he left his job in March 2014 because he needed a daytime job (SOR ¶ 1.b). He did not respond to SOR ¶ 1.c alleging that he falsified his security clearance application by answering "No" to an inquiry concerning whether, in the last seven years, he had been fired, quit after being told he would be fired, or left after mutual agreement following charges or allegations of misconduct. His lack of a response was taken as a denial by the Government. Applicant admitted the financial delinquencies alleged in the SOR. He also admitted his recent arrest in June 2019 for public intoxication (SOR ¶ 3.b).

Findings of Fact

After considering the FORM as amended, I make the following findings of fact.

Applicant is 59 years old and married with one daughter, age 36. He earned his associate's degree in May 1997. He has worked for his current employer, a defense contractor, since November 2017. (Items 3-4.)

In May 2013, Applicant reportedly retired from his employment as a service technician with a telecommunications company after 14 years on the job. He immediately began working as an instrument technician for a defense contractor (company X) on a U.S. airbase, and was granted a Secret clearance in October 2013. On March 28, 2014, he consumed about four beers, apparently planning to be on scheduled leave from work that day. For some reason not apparent in the record, his vacation plans changed, and he reported to work for the second shift at approximately 3:30 p.m. Within the hour, he was required to submit to a random screen for drugs and alcohol. His blood alcohol level tested at .059% initially and .056% 15 minutes later. Because his alcohol level exceeded the

company's limit of .040%, Applicant was sent home immediately pending review for termination under company X's zero-tolerance policy. Applicant resigned that day, citing personal reasons, because he was concerned that he would be fired after the employer completed its investigation. (Items 4, 8-9.)

Applicant began working as a mechanic for his state's department of transportation in March 2014. He left that job in January 2016 for a better-paying job as a mechanic in the commercial sector. In August 2017, he resigned because of "too much travel time," and began working for his state in maintenance at a state park. After only a month, he was offered a position with his current employer at a nearby airbase. (Item 3.)

On September 18, 2017, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) incorporated within an e-QIP. In response to section 13A concerning employment activities, Applicant listed his various jobs since January 1999, including with company X. He gave as the reason for leaving his employment with company X that he "needed daytime job due to family." Applicant responded "No" to an inquiry concerning whether, in the last seven years, he had been fired, quit after being told he would be fired, left by mutual agreement following charges or allegations of misconduct, or left by mutual agreement following notice of unsatisfactory performance. Applicant listed in response to the police record inquiries that he had pled no contest to a misdemeanor driving under the influence (DUI) charge in May 1986. He also disclosed two debts totaling $10,000 (SOR ¶¶ 2.e and 2.p) in response to inquiries concerning any routine delinquencies in the last seven years, and explained that he was trying to earn more income to pay his creditors. (Item 3.)

Applicant owed several more delinquencies than the two debts disclosed on his SF 86. His delinquent accounts, as reported by one or more of the three credit reporting agencies on September 22, 2017 (Item 5), April 18, 2018 (Item 6), and March 26, 2019 (Item 7), and as discussed during his May 15, 2018 subject interview (Item 4) are shown in the following table:

Debt in SOR	Delinquency history	Payment status
a. $9,979 credit card charged off	Opened July 1994, $8,800 credit limit; last activity June 2015; $9,979 (high credit on account) charged off Feb. 2016; $9,968 past due as of Sep. 2017; default judgment for $10,141 in 2018.	Plan as of May 2018 was to begin repayment at $50 a month; no evidence of payments as of Mar. 2019.
b. $8,070 credit card in collection	Inactive after Aug. 2015, $7,601 to collections Mar. 2017; unpaid as of Mar. 2018; judgment hearing scheduled for late June 2018; $8,070 balance reported as of Feb. 2019.	File does not shed light on whether a judgment was granted; stated in May 2018 intended to pay debt at $50 a month; no evidence of repayment as of Mar. 2019.

c. $7,890 credit card charged off	Opened July 1998, $7,750 credit limit; $7,890 charged off July 2015; $7,890 balance as of Mar. 2019.	Plan as of May 2018 was to contact creditor to begin making $50 payments; no evidence of repayment as of Mar. 2019.
d. $3,664 credit card in collection	Opened Aug. 2003, $3,900 credit limit; last activity Aug. 2015; $4,164 in collections as of Aug. 2017; $3,664 charged off Mar. 2018; $4,164 default judgment.	Court order to pay $500 before Mar. 16, 2018, arranged as of May 2018 to pay $200 monthly; $3,664 charged-off balance unpaid as of Mar. 2019; no evidence of payments on that balance.
e. $2,706 credit card charged off	Opened June 2008, credit limit $2,250; $2,706 charged off Feb. 2016; unpaid as of Mar. 2019.	Planned as of May 2018 to contact creditor and make $50 monthly payments; no evidence of repayment as of Mar. 2019.
f. $2,513 medical debt in collection	$2,513 medical debt from June 2016 for collection Feb. 2017; knew no details about debt as of May 2018.	Planned as of May 2018 to contact creditor and make $50 monthly payments; no evidence of repayment as of Mar. 2019.
g. $2,437 credit card in collection	$2,437 credit-card debt from Sep. 2015, for collection Apr. 2016; $2,437 balance as of Sep. 2017; unpaid as of Mar. 2019.	Planned as of May 2018 to contact creditor and make $50 monthly payments; no evidence of repayment as of Mar. 2019.
h. $2,401 account in collection	PayPal account opened May 2005, $2,050 credit limit; last activity Jan. 2016; for collection Aug. 2016; charged off and sold Sep. 2016; $2,401 judgment Jun. 2017.	Planned as of May 2018 to contact collection entity to arrange for $50 monthly payments; no evidence of repayment as of Mar. 2019.
i. $2,242 credit card charged off	Opened May 2003, credit limit $2,000; last activity Sep. 2015; $2,242 high credit charged off Apr. 2018; default judgment for $2,242.	Planned as of May 2018 to contact collection entity and begin making $50 payments; no evidence of repayment as of Mar. 2019.
j. $2,028 credit card in collection	$1,799 debt for collection Apr. 2017; unpaid as of Apr. 2018; no evidence of active collection as of May 2018; past due for $2,028 as of Mar. 2019.	Planned as of May 2018 to contact collection entity and begin making $50 payments; no evidence or repayment as of Mar. 2019.

k. $1,613 credit card charged off	Opened Nov. 1998, $3,900 credit limit; last activity Aug. 2015; $2,713 in collections as of Aug. 2017; $2,713 balance Mar. 2018; charged off for $2,231; $2,713 judgment as of Mar. 2018.	Court order to pay $500 by Mar. 26, 2018, arranged as of May 2018 to pay $200 monthly; $1,613 balance unpaid as of Mar. 2019; no evidence of payments on that balance.
l. $1,462 credit card in collection	$1,257 debt from Nov. 2015 for collection Sep. 2016; $1,402 judgment Oct. 2017; $1,462 balance as of Apr. 2018.	Planned as of May 2018 to contact collection entity and begin making $50 payments; no evidence of repayment as of Mar. 2019.
m. $819 medical debt past due	$819 medical debt from June 2016 for collection Nov. 2016.	Planned as of May 2018 to arrange for $50 monthly payments; no evidence of repayment as of Mar. 2019.
n. $735 credit card in collection	$605 debt from Dec. 2015 for collection July 2016; unpaid as of Apr. 2018.	Planned as of May 2018 to contact creditor and begin making $50 payments; $735 balance as of Mar. 2019 with no evidence of repayment.
o. $294 medical debt past due	$294 medical debt from June 2016 for collection July 2016.	No evidence of repayment as of Mar. 2019.
p. $7,891 installment loan charged off	Opened Apr. 2013, high credit $18,466; last activity Feb. 2016; $7,891 charged off Feb. 2017; in collection as of Mar. 2018.	Settled for less than full balance.

On May 8, 2018, and on May 15, 2018, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). During his first interview, Applicant reported a history of social drinking starting in his early 20s. He denied any consumption of alcohol to excess since his 1986 DUI, which he described was an isolated incident due to his youth and immaturity. He reported drinking three or four beers once or twice a month since May 1983, becoming intoxicated no more than once a month. While he had consumed four beers over about three hours' time before reporting to work on March 28, 2014, he did not then believe that he had alcohol in his system. When confronted with his negative response to the SF 86 questions asking whether he had quit a job after being told he would be fired or whether he had left a job under mutual agreement following allegations of misconduct, Applicant stated that he had hoped to find a day-shift job to assist his spouse with her medical needs before then volunteering that he would not have resigned if he had not failed a random test for alcohol. He admitted that he should have answered "Yes" to the SF 86 inquiry, but asserted that he was under the impression at the time that because he had resigned, company X would not complete an investigation and his employment record would not show that he had resigned for failing the test. He

then admitted that he had not fully detailed the reasons for his resignation on his SF 86 because he feared the information would affect his ability to maintain a security clearance. When later discussing the personal conduct implications of his negative response to the employment inquiry on his SF 86, he claimed he answered as he did because he did not know for certain that he would have been fired. (Item 4.)

During his May 8, 2018 interview, Applicant acknowledged the delinquencies on his credit record except for the $7,891 charged-off installment loan (SOR ¶ 1.p), which he did not recognize. He volunteered that some creditors had pursued court action; that one creditor filed a lien against his property; and that he had consulted with a bankruptcy attorney in late 2017, but was advised that his current income was too high to file for a Chapter 13 [sic] bankruptcy. He expressed a desire to pay his creditors in full. He indicated that he did not know where to start with respect to resolving his delinquent debts. Applicant attributed his financial problems to having to pay for medical insurance for his spouse after he quit his job in March 2014; to his income from March 2014 to November 2017 being about half of what it had been previously; and to his spouse's unemployment for medical reasons. (Item 4.)

During his May 15, 2018 interview, Applicant explained that he and his spouse used credit cards to cover some financial obligations. He identified those creditors who had obtained default judgments against him. He expressed an intention and plan to contact his creditors and make payments at $50 a month, with the exception of the judgment debts (SOR ¶¶ 2.d and 2.k) where he was under court order to pay $200 per month toward each debt. He estimated his monthly expenses at $2,270, and indicated that he would have $180 in discretionary income if he made his payments to his creditors. He explained that if his creditors refused to accept his planned payments, he would seek counseling through a bankruptcy court. The OPM investigator gave Applicant five days to provide receipts for payments on the judgments. (Item 4.) There is no evidence that he provided any documentation of repayment. As of March 2019, the charged-off balances were still being reported on his credit record as past due.

Applicant was arrested for public intoxication on approximately June 26, 2019. He pled no contest and paid a fine of $370. In self-reporting the incident to his employer on July 2, 2019, Applicant explained that he and his spouse argued after he arrived home from work around 11:30 p.m. on June 25, 2019; that his spouse left the house; that he drove around looking for her without success throughout the night; that around 8:00 in the morning, he stopped at a friend's home, and he was given "part of a 12-pack" of beer and told to go home. He stated that he consumed one part of a beer before stopping off at fuel station where he drank another can of beer at the pump. The police were called. After taking a field sobriety test, he was arrested for public intoxication and taken to the county jail where he paid a $370 fine. (Item 9.) Applicant now recalls the incident as occurring on June 24, 2019. He presented no documentation clarifying the date or corroborating his account of the circumstances of his arrest.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

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

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of EO 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline E: Personal Conduct

The security concern about personal conduct is articulated in AG ¶ 15:

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

Applicant admits that he engaged in poor judgment contemplated within Guideline E when he reported to work on March 28, 2014, under the influence of alcohol, as shown by a failed random drug and alcohol screening test administered to him. He resigned from his position that same afternoon rather than face automatic termination under his then employer's policy. Disqualifying condition AG ¶ 16(d) applies. It provides:

> (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 individual may not properly safeguard classified or sensitive 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 government protected information;
> >
> > (2) any disruptive, violent, or other inappropriate behavior;
> >
> > (3) a pattern of dishonesty or rule violations; and
> >
> > (4) evidence of significant misuse of Government or other employer's time or resources.

With regard to AG ¶ 16(d)(3), there is no evidence that Applicant had reported to work under the influence of alcohol on any other occasion. It is inappropriate behavior under AG ¶ 16(d)(2), however, in that it was in violation of his then employer's zero-tolerance policy.

Applicant denies that he deliberately falsified his September 2017 SF 86 by misrepresenting the reason why he resigned from that employment (SOR ¶ 1.b). He did not admit or deny that he falsified his SF 86 by responding "No" to whether he was fired, quit knowing that he would be fired, or left by mutual agreement following charges or allegations of misconduct (SOR ¶ 1.c). The Appeal Board has repeatedly held that, to establish a falsification, it is not enough merely to demonstrate that an applicant's answers were not true. To raise security concerns under Guideline E, the answers must be

deliberately false. In analyzing an applicant's intent, the administrative judge must consider an applicant's answers in light of the record evidence as a whole. *See e.g.*, ISCR Case No. 14-05005 (App. Bd. Sep. 15, 2017): ISCR Case No. 10-04821 (App. Bd. May 21, 2012). On his SF 86, Applicant gave as his reason for leaving company X is that he "needed a daytime job due to family." This may not have been false, but it was incomplete and clearly misleading in light of his negative response to whether he had been fired; quit after being told that he would be fired; left by mutual agreement following charges or allegations of misconduct; or left by mutual agreement following notice of unsatisfactory performance. Applicant resigned to avoid termination. His lack of candor on his SF 86 about the circumstances under which he left the employment of company X triggers AG ¶ 16(a), which states:

> (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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant has the burdens of proof and persuasion with regard to establishing mitigation. AG ¶ 17(a), "the individual made prompt good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts," warrants some consideration because Applicant detailed the circumstances surrounding his resignation from company X when he was interviewed by the OPM investigator on May 8, 2018. Yet, it took some prompting from the investigator for him to acknowledge that he did not fully disclose the circumstances that led to his resignation from company X when he completed his SF 86 because he feared the impact of the information on his security clearance eligibility.

AG ¶ 17(c) has some applicability because of the passage of time since the March 2014 incident. There has been no recurrence of him reporting to work under the influence of alcohol or otherwise violating an employer's policy in the last five years. AG ¶ 17(c) provides:

> (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 acknowledged his poor judgment with respect to cancelling his leave and reporting to work after drinking in March 2014 during his OPM interview. He also admitted to the OPM investigator that he should have detailed on his SF 86 the adverse circumstances under which he left that employment. AG ¶ 17(d) provides:

> (d) the individual has acknowledged the behavior and obtained counseling to change that behavior or taken other positive steps to alleviate the stressors,

circumstances, or factors that contribute to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

However, the personal conduct security concerns are not fully mitigated under AG ¶¶ 17(c) or 17(d). His June 2019 arrest for public intoxication, that occurred after he received and responded to the SOR, undermines his case for reform as to whether he can be counted on to exercise the good judgment expected of persons with clearance eligibility. Despite his admission to the OPM investigator that he answered the SF employment inquiries as he did because he feared the impact on his clearance eligibility, he is now not willing to acknowledge that he intentionally concealed or misrepresented the circumstances under which he left that employment. Concerns about his personal conduct persist.

Guideline F: Financial Considerations

The security concerns about financial considerations are articulated in AG ¶ 18:

> Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

> This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

Applicant's credit reports of September 2017, April 2018, and March 2019, and Applicant's admissions during his May 2018 subject interviews, establish the delinquencies alleged in the SOR. His delinquent balances accrued to approximately $58,376. Disqualifying conditions AG ¶ 19(a), "inability to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Four mitigating conditions under AG ¶ 20 could apply in whole or in part:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) is only minimally established. The debts are not new delinquencies. Several of the debts became past due in 2015 and were charged off in 2016. Judgments were entered against him for five of the debts, and he had a court hearing pending on another judgment filing as of May 2018. As of March 2019, a $7,891 charged-off debt (SOR ¶ 2.p) was reportedly settled for less than its full balance, but the other debts in the SOR had not been resolved. Those debts are considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)).

Regarding AG ¶ 20(b), Applicant attributes his financial problems to insufficient income between March 2014, when he resigned from company X, and November 2017, when he started his current employment. Applicant's spouse is apparently unable to work because of medical reasons not explained. Three of the collection debts in the SOR (¶¶ 2.f, 2.m, and 2.o) are medical debts. Nonetheless, AG ¶ 20(b) cannot fully apply in mitigation where the job loss was caused by Applicant's own misconduct in reporting to work under the influence of alcohol. Furthermore, even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside of his control, I have to consider whether Applicant acted in a reasonable manner when dealing with his financial difficulties. *See* ISCR Case No. 05-11366 at 4, n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)).

Applicant told an OPM investigator in May 2018 that he was court-ordered to pay two judgment debts (SOR ¶¶ 1.d and 1.k) at $200 a month through October 2019 after an

initial $500 payment on each account. Based on his present income, he reported he could make $50 monthly payments on his other delinquencies. The account in SOR ¶ 1.p was reported on his March 2019 credit report as settled for less than its full balance as of January 2019, but there is no documentation showing repayment on his other delinquencies. Even giving Applicant some time to regain his financial stability after he began his current employment, he could reasonably be expected to have made more progress toward addressing his past-due debts by the close of the record in September 2019.

The FORM is silent as to the amount paid to settle the debt in SOR ¶ 1.p, but it appears to have been legally resolved. The Appeal Board has held that an applicant is not required to establish that he has paid off each debt in the SOR, or even that the first debts paid be those in the SOR. *See* ISCR Case No. 07-06482 (App. Bd. May 21, 2008). Yet, the Appeal Board recently reiterated in ADP Case No. 17-0063 (App. Bd. Dec. 19, 2018) that "an applicant must demonstrate a plan for debt repayment, accompanied by concomitant conduct, that is, conduct that evidences a serious intent to resolve the debts." Applicant has not demonstrated a track record of timely payments on most of his delinquencies. Insufficient good faith is established when creditors have to resort to judgment actions. As of May 2018, Applicant was aware that four judgments had been entered against him and that a fifth filing for judgment was pending hearing. A promise to pay a debt at some future date is not a substitute for a track record of timely payments. Absent some evidence of Applicant's compliance with a current repayment plan, neither AG ¶ 20(c) nor AG ¶ 20(d) applies. The financial considerations security concerns are not mitigated.

Guideline G: Alcohol Consumption

The security concern for alcohol consumption is articulated 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 trustworthiness.

Applicant allowed his alcohol consumption to negatively impact his judgment when he reported to work after drinking in March 2014. His blood-alcohol level was .059%, which is under the legal limit for drunk driving, but it was a violation of his then employer's zero-tolerance policy against being under the influence of alcohol at work. Concerning his June 2019 arrest for public intoxication, Applicant may have minimized the extent of his alcohol consumption. He told his employer that he drank "one part of a beer" before stopping off at service station and drinking one beer at the gas pump. He was arrested after a field-sobriety test. While the police report is not part of the file, the police are unlikely to have arrested and fined him unless he showed signs of intoxication. The following disqualifying conditions under AG ¶ 22 apply:

> (a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol

use or whether the individual has been diagnosed with alcohol use disorder; and

(b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, drinking on the job, or jeopardizing the welfare and safety of others, regardless of whether the individual is diagnosed with alcohol use disorder.

AG ¶ 23 provides for the following mitigating conditions:

(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;

(b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;

(c) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and

(d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrate a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

AG ¶ 23(a) has some applicability in that the incidents appear to be isolated. AG ¶ 23(b) is partially established because Applicant acknowledged his poor judgment in drinking before reporting for duty in March 2014. He self-reported his arrest in June 2019 to his employer, but he was impaired enough for the police to arrest him after a field sobriety test. There is no evidence that Applicant has had any alcohol counseling or taken other steps since the incident of June 2019 to ensure that there will be no recurrence of alcohol adversely affecting his judgment in the future. His public intoxication is too soon to enable a predictive judgment that similar incidents are unlikely 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 his conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the

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

Security clearance decisions are not intended as punishment for past specific conduct. The security clearance assessment is a reasonable and careful evaluation of an applicant's circumstances and whether they cast doubt upon his judgment, self-control, and other characteristics essential to protecting national security information. Applicant presented little information to overcome the security concerns. It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). After applying the disqualifying and mitigating conditions to the evidence presented, I conclude that it is not clearly consistent with the national interest to grant or continue security clearance eligibility 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 E:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a-2.o:	Against Applicant
Subparagraph 2.p:	For Applicant
Paragraph 3, Guideline G:	AGAINST APPLICANT
Subparagraphs 3.a-3.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 or continue eligibility for a security clearance for Applicant. Eligibility for access to classified information is denied.

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Elizabeth M. Matchinski
Administrative Judge