DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 19-01350
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Gatha Manns, Esq. Department Counsel
For Applicant: *Pro se*

08/26/2020

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Decision

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LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to revoke his eligibility for access to classified information. The evidence is sufficient to mitigate his history of financial problems as well as his history of alcohol-related incidents away from work. Accordingly, this case is decided for Applicant.

Statement of the Case

Applicant completed and submitted a Standard Form (SF) 86, Questionnaire for National Security Positions, the official form used for personnel security investigations, on January 5, 2017. (Exhibit 1) This document is commonly known as a security clearance application. Thereafter, on May 9, 2019, after reviewing the application and the information gathered during a background investigation, the Department of Defense Consolidated Adjudications Facility, Fort Meade, Maryland, sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant him eligibility for access to classified information. The SOR is similar to a complaint. It detailed the factual reasons for the action under the security

guidelines known as Guideline F for financial considerations and Guideline G for alcohol consumption.

Applicant answered the SOR on June 5, 2019. He admitted five of the seven factual allegations under Guideline F; he admitted the five factual allegations under Guideline G; he provided a few handwritten explanations; and he requested a hearing before an administrative judge.

The case was assigned to an administrative judge on August 1, 2019, and then reassigned to me on August 9, 2019. The hearing took place as scheduled on September 25, 2019. Applicant appeared without counsel. Department Counsel offered documentary exhibits, which were admitted as Exhibits 1-5. Applicant offered documentary exhibits, which were admitted as Exhibits A-K. Other than Applicant, no witnesses were called. The hearing transcript (Tr.) was received on October 7, 2019.

The record was kept open to provide Applicant an opportunity to submit additional documentation in support of his case. He made a timely submission, and the documents (along with the e-mail correspondence) are admitted without objections as Exhibits L-O.

Findings of Fact

Applicant is a 34-year-old employee who is seeking to retain a security clearance. (Tr. 6-7) He works as a lead flight mechanic performing maintenance on UH-60 Black Hawk helicopters. He has been employed with this company or its predecessor-in-interest since December 2011. He has a very good employment record with his current employer. (Exhibit M) For example, in a highly favorable letter of recommendation, Applicant's program manager described Applicant as "one of our best and brightest and is routinely sought after when there is a problem with one of our aircraft." (Exhibit M at 1) Applicant stated that he has increased his annual income from $52,000 in 2011 to about $90,000 in 2019. (Tr. 71) He was previously employed as a master aircraft mechanic from October 2010 to December 2011. His educational background includes a high school diploma and some college.

Applicant's employment history also includes honorable service as a traditional, part-time Guardsman in the Army National Guard from August 2006 to August 2012. (Exhibit H) His military occupational specialty (MOS) was 15T10, helicopter repairer, which is primarily responsible for maintenance of the Black Hawk helicopter. He was on active duty for about one year, from June 2008 to June 2009. During that period, he deployed to and served in Iraq for about ten months with an aviation unit. His military decorations include the Air Medal (2nd award), Iraq Campaign Medal with Campaign Star, and Combat Action Badge.[1]

[1] The Air Medal is awarded for single acts of heroism or meritorious achievement while participating in aerial flight. The Combat Action Badge is awarded to soldiers of the U.S. Army of any rank, and who are not members of an infantry of special forces unit, for being present and actively engaging or being engaged by the enemy and performing satisfactorily per the rules of engagement.

Applicant married in 2012. He and his spouse have two young daughters. He has lived separately from his spouse for some time, and his intention is to obtain a divorce. (Tr. 70-71) He described the current relationship as cordial, they are both focused on co-parenting, and he usually has his children on the weekends.

The SOR alleged and Applicant largely admitted a history of financial problems. In addition to his admissions, the factual allegations in the SOR are established by the documentary evidence. (Exhibits 2, 3, and 5) The SOR concerns seven collection or charged-off accounts ranging in amounts from $439 to $6,704 for a total of approximately $18,646. Applicant denies or disputes two of the seven delinquent accounts. Pertinent details about the seven debts are discussed below.

Applicant attributed the cause of his financial problems to an unexpected recoupment action taken by the Defense Finance and Accounting Service (DFAS) in 2012 and 2013. (Tr. 33-35; Exhibit J) Per the February 2013 last-chance letter from DFAS, the $7,106 debt was due to recoupment of the unearned portion of his National Guard bonus. (Exhibit J at 3) Applicant believed the recoupment action took "more than double the money" they were supposed to take, which occurred via wage garnishment and interception of income tax refunds. (Tr. 33) Applicant tried to contest the action without success. As a result, Applicant was unable to pay other outstanding debts. (Tr. 35) Per the 2017 credit report, the DFAS debt is described as a paid $7,100 collection due to government overpayment, and the account is closed. (Exhibit 3 at 3)

The $6,704 charged-off account in SOR ¶ 1.a stems from a deficiency balance after repossession of an automobile. The 2017 credit report shows that account was an automobile loan for $22,754 with a repayment schedule for 72 months at $429 per month, which was opened in May 2012. (Exhibit 3 at 3) The credit report also shows the $6,704 debt was charged off in August 2013. Applicant explained that he voluntarily surrendered the auto because he was unable to repay the loan due to the then ongoing DFAS recoupment action. (Tr. 33-34) He has not taken any action to repay the charged-off debt. (Tr. 46-47)

The $4,853 charged-off account in SOR ¶ 1.b stems from an automobile loan Applicant obtained in March 2017. (Exhibits 2 and 3) Applicant explained the delinquency occurred after the vehicle was involved in an accident in January 2018, and he understood his auto insurance company was supposed to settle the matter with Nissan Motor. (Tr. 35) He has not taken any action to repay the charged-off debt. (Tr. 48-49)

The $1,105 collection account in SOR ¶ 1.c stems from a class Applicant sought to take with a Christian college or university. He explained that he dropped out of the class after the initial session after he was ridiculed for his religious faith. (Tr. 35, 49-50) He settled the debt for a lesser amount in June 2019. (Exhibit F)

The $450 charged-off account in SOR ¶ 1.d stems from an account with a major credit-card company. Applicant denied this debt because he believes it was erroneously established when he opened a credit-card account with the same company, an account

which is in good standing. (Tr. 35-36, 50-51) In other words, the company created two accounts at the same time. To that end, Applicant presented three account statements from August 2019 through October 2019 for a credit-card account with the same major credit-card company showing the account is in good standing. (Exhibit N) Applicant also presented a single page from a credit report that reflects both accounts. (Exhibit O) The account in good standing was opened in January 2018, and the account status is described as open/never late. The account at issue in the SOR was opened in December 2017, the balance was $450 as of May 2019, the account status was charged off with $450 past due as of May 2019, and the account was closed at the creditor's request. Applicant is mistaken in his belief; namely, the closure of a delinquent account does not equate to a favorable resolution. The debt is a legitimate charged-off account as reflected in the April 2019 credit report. (Exhibit 2 at 2)

The $439 collection account in SOR ¶ 1.e stems from a cable TV bill. (Tr. 36, 51-52) Applicant paid the account in full in June 2019. (Exhibit E)

The $4,480 collection account in SOR ¶ 1.f stems from an apartment lease Applicant signed in September/October 2010 in his state of former residence. (Tr. 36-37, 53-54; Exhibit K) Applicant disputes the validity of this debt. He explained in vivid detail that after he signed the lease, he inspected the apartment and discovered holes in the wall, blood on the floor, and all the appliances were missing. (Tr. 36) He deemed the apartment unfit for occupancy, and the landlord attempted to have him sign another lease for a different apartment. He refused, but did move his household goods into the second apartment where it remained for a few weeks until his departure. The charged-off account is reflected in the 2017 credit report but is not reflected in the 2019 credit report. (Exhibits 2 and 3) Given the age of the account, it probably aged off the 2019 credit report.

The $615 collection account in SOR ¶ 1.g stems from a telephone account. Applicant settled the debt for $472 in June 2019. (Exhibit G)

In addition to the matters in the SOR, Applicant presented proof of payment of a $25 medical collection account stemming from an emergency room visit. (Exhibit I)

Overall, Applicant stated that his financial situation was improving. He had $2,000 in a savings account, $2,000 at home as an emergency fund, and he was no longer living paycheck-to-paycheck. (Tr. 72)

Applicant has a history of excessive consumption of alcohol, beer in his case. He attributes his heavy drinking to the culture he experienced during his military service. (Tr. 64-65) It may have included drinking to the point where he had blackouts. (Tr. 59) He stated that after returning from his deployment to Iraq in 2009, he "kind of crawled into a bottle and it took a while for [him] to work [himself] out of it." (Tr. 59) He further explained that he believes he was a functioning alcoholic for most of the time he was living and working in State T from October 2010 to December 2011. (Tr. 59, 70; Exhibit 1) He believes that he used to have an alcohol problem, but that he has essentially grown out of it. (Tr. 63) He currently drinks a six-pack of beer over the course of a

weekend, and he does not drink at all during the work week. (Tr. 64-65) The change came about when he moved from State T to State A, and he began his current job in December 2011 (Tr. 65) His subsequent marriage in 2012 and the birth of his first child in 2012 were also motivating factors. He has not sought out treatment or counseling for his use of alcohol other than what he went through after he was charged with driving under the influence (DUI) in January 2018, as discussed below. (Tr. 63, 69-70)

The SOR alleged and Applicant admitted a police record of five alcohol-related incidents away from work. Four of the incidents occurred during 2010-2012. The most recent incident was a DUI arrest following a single-car accident in January 2018. He has never had an alcohol-related incident at work. In addition to his admissions, the factual allegations in the SOR are established by the documentary evidence. (Exhibits 1, 4, 5, A, and B) Pertinent details about the five incidents are discussed below.

Applicant was arrested for and charged with driving while intoxicated (DWI) in October 2010 while living in State T. The FBI Identification Record reflects that Applicant pleaded no contest and the charge was dismissed. (Exhibit 4) Applicant explained that he was stopped by the police after leaving a sports bar where he had drunk beer. (Tr. 37-38) He also explained that the charge was dismissed under a program for returning military veterans with combat experience. The DWI charge was dismissed when he showed proof of his Combat Action Badge.

Applicant was arrested for and charged with public intoxication in November 2010 while living in State T. The FBI record reflects that Applicant was charged with unlawful carrying a weapon, the disposition of which was a no bill. (Exhibit 4) Applicant explained that he was stopped by the police while walking to a store. (Tr. 38-39, 57-60) He may have declined to perform a field sobriety test, but he told the police he was carrying a firearm, which he then assisted them in locating on his person. He went to the scheduled court appearance intending to contest the public intoxication offense, but decided to plead guilty and pay a $100 fine so he could avoid waiting and get back to work.

Applicant was arrested for and charged with DWI in September 2011 while living in State T. The FBI record reflects that the charge was dismissed. (Exhibit 4) Applicant explained that he believes he was charged because he refused to perform a breathalyzer test. (Tr. 39-40, 60-61) He stated he had previously taken and passed the field sobriety tests. He had not consumed alcohol that night, as he was the designated driver.

Applicant was arrested and charged with public intoxication in March 2012, a few months after relocating to State A. Applicant explained this incident stemmed from his attempt to buy a piece of furniture via Craigslist and the resulting misunderstanding and conflict between him and the seller. (Tr. 40-41, 61-62; Exhibit 5 at 4) Applicant had one or two beers at a sports bar before meeting with the seller. The seller called the police, and Applicant ended up arrested for public intoxication. He sought legal advice because he was soon to be married and wanted to dispose of the matter. Per his lawyer's advice, he pleaded no contest and paid a small fine.

The fifth and most recent incident occurred in January 2018, when he was arrested for and charged with DUI. Applicant explained this incident stemmed from a single-car accident while driving home after a poker game at a friend's house where he had a couple of beers. (Tr. 41-42, 63, 74-75). He stopped on the way and bought a 12-pack of beer. Resuming his trip, he hit a deer about three miles from his home, entered the ditch next to the road, and then hit a tree. He broke a rib, fractured his leg, and was laying alongside the road when the authorities arrived. The 12-pack of beer had exploded during the accident. The police wanted him to perform a field sobriety test, which he refused due to his injuries. He was subsequently arrested.

In February 2018, the State Driver License Division concluded the available information about the incident was not sufficient for an administrative suspension, and decided not to administratively suspend his driving privilege based on his refusal. (Exhibit B) For the DUI case, with assistance of counsel, Applicant completed a type of pre-trial diversion program over the course of several months requiring him to submit to random drug and alcohol tests and attend classes on substance abuse. The major lesson he learned from the program was that "it's just easier to not live life on that side." (Tr. 74-75) Applicant complied with all requirements, including payment of $370 in court costs, and the state court dismissed the DUI charge in November 2018. (Exhibit A)

At the time of the accident, Applicant had already reduced his level of alcohol consumption. After the accident, Applicant abstained from alcohol during the months he was in the program, from about March through October 2018. (Tr. 73) He then resumed drinking beer, but only on weekends as described above.

Law and Policies

This case is adjudicated under Executive Order (E.O.) 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.

It is well-established law that no one has a right to a security clearance.[2] As noted by the Supreme Court in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."[3] Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security. In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.[4] The DOHA Appeal

[2] *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

[3] 484 U.S. at 531.

[4] 484 U.S. at 531.

Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.[5]

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.[6] Under the Directive, the parties have the following burdens: (1) Department Counsel has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted; (2) an applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven; and (3) an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.[7]

Discussion

Under Guideline F for financial considerations, the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness or financial problems or difficulties. The overall concern is set forth in AG ¶ 18 as follows:

> Failure or inability 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. . . .

The concern is broader than the possibility that a person might knowingly compromise classified or sensitive information to obtain money or something else of value. It encompasses concerns about a person's self-control, judgment, and other important qualities. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified or sensitive information.

In analyzing the facts of this case, I considered the following disqualifying and mitigating conditions as most pertinent:

AG ¶ 19(a) inability to satisfy debts;

AG ¶ 19(c) a history of not meeting financial obligations;

AG ¶ 20(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

[5] ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

[6] ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

[7] Directive, Enclosure 3, ¶¶ E3.1.14 and E3.1.15.

separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

The evidence supports a conclusion that Applicant has a history of financial problems that is sufficient to raise a security concern under Guideline F. The disqualifying conditions noted above apply to this case.

Turning to the matters in mitigation, Applicant's financial problems are related to the unexpected DFAS action to recoup a bonus he received for his service in the National Guard. The recoupment action was for $7,100, which is not a minor sum of money. The recoupment action was in late 2012 and early 2013, it followed his marriage and the birth of his first child in 2012, and it proved to be a financial setback. He acted reasonably under the circumstances by voluntarily surrendering a vehicle he could no longer afford. Given the circumstances, the mitigating condition at AG ¶ 20(b) applies in Applicant's favor.

Applicant has made a good-faith effort to resolve some of his delinquent accounts. He paid or settled three of the smaller debts and he paid a minor medical collection account too. But there are also three accounts for which he has taken no action and had no plan to do so. One of those three he was under the mistaken impression that the account is invalid. Given the circumstances, the mitigating condition at AG ¶ 20(d) applies in Applicant's favor to a limited extent.

Applicant has also provided sufficient evidence, through his vivid testimony and documentation, that he has a legitimate basis to dispute the $4,480 collection account stemming from the apartment lease he signed in 2010. He probably has a legitimate claim of constructive eviction, in that the landlord's act of making the apartment unfit for occupancy resulted in Applicant being compelled to leave. In any event, the debt is nearly ten years old, and it is no longer reflected in the Government's most recent credit report from 2019. Given all the circumstances, it is no longer of security significance. Accordingly, the mitigating condition at AG ¶ 20(e) applies to this particular debt.

Under Guideline G for alcohol consumption, the suitability of an applicant may be questioned or put into doubt because, as set forth in AG ¶ 21, excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and it can raise questions about a person's reliability and trustworthiness.

In analyzing the facts of this case, I considered the following disqualifying and mitigating conditions as most pertinent:

> 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 the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder;
>
> AG ¶ 22(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder; and
>
> AG ¶ 23(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 judgment.

The evidence supports a conclusion that Applicant has a history of excessive consumption of alcohol that is sufficient to raise a security concern under Guideline G. For the reasons discussed below, the disqualifying and mitigating conditions noted above apply here.

The key facts are not in dispute. Applicant was involved in five incidents, as alleged in the SOR, which resulted in a police record. He admits that he consumed alcohol in four of the five incidents. The incidents cover a period of years; the first four occurred during a period of less than two years from October 2010 to March 2012. The fifth and most recent occurred in January 2018, about 18 months before the record closed in this case. The three incidents resulting in DWI or DUI charges ended in dismissal, while he pleaded guilty or no contest to two charges of public intoxication and paid a small fine for each offense.

Applicant reports that he has reduced and modified his beer drinking. He limits himself to a six-pack on the weekends and does not drink during the work week. He has followed that pattern of consumption since his relocation to State A in December 2011. He abstained from alcohol for a period of several months following the January 2018 incident. He did so as part of the pre-trial diversion program, which he successfully completed and had the DUI charge dismissed in November 2018.

Applicant's honorable military service also deserves consideration. The award of the Air Medal on two occasions and the Combat Action Badge for his service in Iraq are significant matters. A bit of leeway or forgiveness or both is appropriate for a soldier who risked his life for our Nation, and I have credited him accordingly.

At the hearing, Applicant impressed me as a no-nonsense person. He was candid and direct with answers in response to questions. He made admissions (e.g., crawled into a bottle and functioning alcoholic) about his history of alcohol consumption

that demonstrated self-awareness, insight, and self-reflection about his use of alcohol. It was also an acknowledgment of his abuse of alcohol.

Finally, I considered the history of Applicant's financial problems and alcohol-related incidents together. A good part of his problems, but not the entirety, took place years ago. His financial position is much improved and he is earning enough income to provide for his family and pay his creditors. His pattern of alcohol consumption has also much improved, as he reduced and modified his beer drinking to a point where it is not excessive. Overall, I am persuaded that Applicant's history of financial problems and alcohol-related incidents are now safely in the past and will not recur in the future. Accordingly, given the totality of facts and circumstances, I conclude that Applicant is an acceptable security risk within the meaning of ¶ 2(a) of Appendix A to the Directive.

Following *Egan* and the clearly consistent standard, I have no doubts about Applicant's reliability, trustworthiness, good judgment, and ability to protect classified or sensitive information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also considered the whole-person concept. I conclude that he met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

The formal findings on the SOR allegations are:

Paragraph 1, Guideline F:	For Applicant
Subparagraphs 1.a - 1.g:	For Applicant
Paragraph 2, Guideline G:	For Applicant
Subparagraphs 2.a - 2.e:	For Applicant

Conclusion

It is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility granted.

Michael H. Leonard
Administrative Judge