DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 18-01181
	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Appellant: Jessica R.K. Dorman, Esq.

January 28, 2020

_____

Decision

_____

GLENDON, John Bayard, Administrative Judge:

This case involves security concerns raised under Adjudicative Guidelines G (alcohol consumption), F (financial considerations), and E (personal conduct). Applicant's evidence failed to mitigate these security concerns. National security eligibility for access to classified information is denied.

Statement of the Case

On July 25, 2016, Applicant submitted a security clearance application (SCA) seeking to renew a previously granted clearance. The Department of Defense Consolidated Adjudications Facility (DOD CAF) sent Applicant a Statement of Reasons (SOR) on May 25, 2018, setting forth 18 allegations that raise security concerns under the three guidelines referenced above. The DOD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in

Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (Dec. 10, 2016), effective for all adjudicative decisions on or after June 8, 2017.

On June 16, 2018, Applicant responded to the SOR, admitting 15 of SOR allegations. He provided with his response three documents. He requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On October 17, 2018, the case was assigned to me. The hearing was originally scheduled for November 14, 2018. On November 6, 2018, Applicant's counsel entered her appearance. Three days later, she emailed to Department Counsel approximately 287 pages of proposed documentary evidence. The email was received after business hours on a Friday and Monday, November 12, 2018, was a U.S. Government Holiday. With only one day remaining before the hearing, Department Counsel filed a Request for a Continuance on Tuesday, November 13, 2018, which I granted for good cause shown. Department Counsel's motion and my ruling are marked as Hearing Exhibits 1 and 2, respectively. After consultation with counsel, DOHA issued a notice of hearing on May 6, 2019, scheduling the hearing on May 21, 2019.

I convened the hearing as scheduled. Department Counsel presented eight proposed exhibits, which were marked as Government Exhibits (GE) 1 through 8. Applicant offered 13 proposed exhibits, which, as noted, had been submitted to Department Counsel for review on November 9, 2018. Applicant's counsel had marked those exhibits as Applicant's Exhibits (AE) A through M. Shortly before the hearing, Applicant's counsel submitted four proposed supplemental exhibits, which she marked as AE N through Q.

At the hearing, Applicant's counsel objected to the admission of all of the Government's exhibits on the grounds of hearsay and lack of authentication, including Applicant's SCA and signed response to the Government's interrogatories (GE 1 and 3). The other Government exhibits to which Applicant's counsel objected were four credit reports summarizing Applicant's credit status and recent credit history (GE 5-8), a JPAS Incident Report, dated September 5, 2014, (GE 2) reflecting Applicant's self-report of three arrests for driving under the influence (DUI) and certain credit issues he was experiencing at that time, and an FBI Identification Record (GE 4). I overruled counsel's objections on the grounds that Applicant signed GE 1 and 3, which included representations that the information he provided in the documents was accurate; that GE 5-8 were admissible business records; and that GE 2 and 4 were admissible official records. I explained that Applicant was free to correct or update any information in the Government's evidence. All of Applicant's exhibits were admitted into the record without objection. Applicant and four witnesses testified. DOHA received the hearing transcript (Tr.) on June 5, 2019. (Tr. 10-11, 66.)

Findings of Fact

After a careful and thorough of the pleadings, the testimony at the hearing, and the documentary evidence, I make the following findings of fact:

Applicant, 38, is employed by a defense contractor performing design work. He has held a security clearance since 2004 or 2005. He began working for his current clearance sponsor in December 2015. From November 2013 to December 2015, he worked for a different federal contractor. According to his SCA, he worked for a company that was not a federal contractor from December 2012 through October 2013. Prior to that, he was unemployed for a period of eight or nine months in 2012. He disclosed in his SCA that he was fired in April 2012 from his prior employment for "job abandonment." In that position, he was working in a combat zone in Country A. Since 2005, he had been performing similar work in Country A and in a second combat zone, in Country B. He has also worked in several European countries at various times during the 2005 to 2012 period. He has not worked overseas since 2011 or early 2012. He earned a high school diploma in 1999 and has participated in a specialized, week-long course in his field of employment. He married his long-time girlfriend in 2016 after he submitted his July 25, 2016 SCA. They have four children, ages, 12, 8, 6, and 5. (Tr. 15, 63-64, 71; GE 1 at 11-19, 25, 28-30; GE 2, GE 3 at 6.)

Guideline G

Applicant's Alcohol Consumption and DUI Arrests, SOR ¶¶ 2.a through 2.g (and Guideline E cross-allegation, SOR ¶ 3.b): Applicant admitted each of the seven SOR allegations under Guideline G. In 2009, while working as a contractor in Country A, Applicant drank homemade wine for several hours in his employer's housing on a military base. The alcohol content in the wine was high. While intoxicated, he drove to another part of the base where food was available. He does not recall the drive because of his intoxication. He was stopped by the military police and detained overnight. As a result of his actions, his driving privileges on the base were restricted. He received no reprimand from his employer because, he suspects, his supervisor "hid" the incident from the company's U.S. managers. Had the incident been reported to the managers, he was afraid that the incident would have resulted in serious consequences because his actions were a violation of the U.S. Military's General Order No. 1 for all U.S. military and civilian personnel working in Country A. After this incident, he stopped drinking alcohol for eight months to a year, but then resumed, even though it was not permitted. At times, he would drink to excess and become intoxicated. (Tr. 73-75, 124-126; GE 1 at 39; GE 2; GE 3 at 7.)

In early 2012, Applicant came home on leave and then deferred returning to his job in Country A due to a concern about one of his children. He and his wife, then-girlfriend, had ended their relationship at that time. He was "going through a hard time." On May 16, 2012, he went to a bar "just to calm down" and get out of his house. He felt intoxicated when he left the bar. As he drove his car onto the street, he was stopped by the police for failing to turn on his headlights. His BAC tested at 0.13. He pleaded no

contest to a charge of DUI and was ordered to take a three-month alcohol course for first-time offenders and to serve a three-year period of probation. He completed the course in December 2012. He stopped drinking alcohol for a while, but then began drinking again. (Tr. 69-70, 76-80, 126-128, 136-137; GE 1 at 40-41; GE 2; GE 3 at 7; AE M.)

On June 3, 2013, he was arrested again for DUI. He claims he took an Ambien pill due to sleep problems and then had a verbal fight with his wife and started drinking alcohol. He does not recall what happened after that. He knows that he woke up in jail the next morning. He was told that he drove his wife's car and hit a curb or a rock damaging a wheel. His BAC was 0.14. He again pleaded no contest to the charge of DUI and was ordered to continue on probation until the end of 2018. He was also ordered to take an 18-month, second-offender DUI course that met weekly. He was terminated from the course for excessive absenteeism, and a warrant was issued for his arrest. Following a court proceeding, he was reinstated in the course, and the warrant was dismissed. He completed the course in February 2016. According to GE 4, the FBI Identification Report, Applicant was also sentenced to serve 40 days in jail. During the probationary period, he knew that if he experienced another DUI conviction, he would be incarcerated for one year. He believes that he would also go to jail for one year if he was convicted of DUI after the termination of his probation. Applicant held a security clearance at the time of each of his three DUI arrests. He reported the two more recent arrests to his current employer knowing that his security clearance would require renewal in 2016. (Tr. 69-70, 76-80, 126-128, 136-137; GE 1 at 42-43; GE 2; GE 3 at 7-8; GE 4 at 2; AE M.)

Applicant provided records of his alcohol courses and treatment. He has never voluntarily entered AA or a similar program for persons who have problems with alcohol. He continues to drink alcohol socially. He currently has no formal support network in case he experiences a significant stressor and desires to drink alcohol excessively again. (AE L, M; Tr. 131-132.)

Applicant was raised by alcoholic parents and learned to cope with them by drinking alcohol, starting at a young age. He believes that he presently has a problem with drinking "to a certain extent." He has never been diagnosed as having an alcohol use disorder. The last time he drank alcohol was one week prior to the hearing, when he and his wife had a couple of glasses of wine at their home. He now drinks about once a month, usually with his wife at home. He last drank excessively at a friend's house three months prior to the hearing. His wife drove him home. He no longer drinks and drives and does not drink around his children. As noted below, his wife testified earlier in the hearing and gave conflicting evidence, testifying that she last saw him drink alcohol six months ago. (Tr. 81-86, 133; GE 2 at 8.)

Guideline E

Marijuana Use, SOR ¶ 3.a: Applicant admits this allegation. In March 2011, while home on leave from his job in Country A, he drank an excessive amount of alcohol and was severely intoxicated. While intoxicated, he smoked marijuana with a cousin. The next morning, he did not recall the incident until his wife advised him what he had done. He

held a security clearance at the time. Applicant failed to disclose this use of an illegal drug in his SCA. In his March 2016 background interview, he reported that he had not smoked marijuana since 2002, which was false. He failed to correct this misstatement in his responses to interrogatories, though he made several other corrections and clarifications. In a follow-up interview in December 2017, he disclosed the March 2011 marijuana use. He testified that he has not used marijuana since this incident in 2011. (Tr. 60-61, 86-87; GE 3 at 9, 17.)

Guideline F

Late-Filed Tax Returns for Tax Years 2010 and 2011, SOR ¶ 1.a: Applicant admitted this allegation. While working in Country A in 2010 and 2011, Applicant failed to file his state and federal tax returns for tax years (TY) 2010 on time. When he returned to the United States in February 2012, he had a month or two to file his 2011 tax returns. He believes he filed for extensions while he was in Country A. He testified that with the help of a CPA, he filed his 2010 and 2011 tax returns in 2013 or 2014 and owed $3,500. He provided no documentary evidence to show that he filed his TY 2010 returns. He testified further that the IRS offset his tax refund for TY 2012 of $5,500 by the amount of his unpaid taxes and fees for 2010 and 2011. Applicant's Exhibit D actually reflects that he filed his TY 2012 federal return on October 3, 2013. This exhibit also shows that no refund was due because he made no withholding tax payments that year. Also, Applicant provided no evidence to show that he filed for an extension to submit his TY 2012 returns on or before October 15, 2013. His evidence further shows that he filed his 2011 and 2013 tax returns on May 29, 2014. Accordingly, Applicant's documentary evidence fails to establish that he filed his TY 2010 returns and reflects that his returns for TY 2011, 2012, and 2013 were not filed timely, though the SOR only alleged that Applicant untimely filed his TY 2010 and 2011 returns. He has timely filed his subsequent tax returns using a tax professional. (Tr. 102-105, 119-121; AE C, D, and E.)

Mortgage Foreclosure, SOR ¶ 1.b: Applicant admitted this allegation. As noted, Applicant left his job in Country A and returned to the United States in or about February 2012. He testified that during the following 18-month period, he was unemployed for about 15 months. His SCA reflects that he was only unemployed from March 2012 to November 2012. He and his brother, who also worked in Country A, had jointly purchased a home in 2007 (House 1) and jointly paid the monthly payments on a mortgage loan that they used to buy the residence. At some point, his brother decided to stop paying the mortgage, even though he was living in House 1 at the time with his girlfriend and her four children. As a result, Applicant had to continue paying the entire monthly mortgage. His brother wanted to buy a new house, and Applicant loaned his brother $17,000 so he could buy the house and move out of House 1. Applicant had significant savings from his job working in Country A. He testified that his savings eventually "ran out" and he could no longer pay the mortgage. Government Exhibits 5 and 8 and AE A reflect that the last payment on this mortgage loan was in April 2012, shortly after Applicant returned from Country A, left his job, and was unemployed. He testified further that he actually used his remaining savings to purchase a second house (House 2). He clarified that he "paid [the mortgage on House 1] until I found other - - another property to buy." In August 2012, he

purchased House 2 for his family in a cash transaction without a mortgage loan. He was unemployed at the time. His financial resources were very limited after his purchase of House 2, and he sold the house in November 2014. The record is silent as to what he did with the proceeds of the sale of House 2. (Tr. 87-91, 109, 112; GE 1 at 8-9, 15; GE 5 at 5; GE 8 at 5; AE A at 9-10.)

In September 2012, the mortgage on House 1 went into foreclosure. The amount of the outstanding balance of the mortgage loan was about $260,000. The house was only worth about $120,000. The foreclosure was completed in January 2013. Applicant testified that before the foreclosure was finalized, he tried to do a short sale, but was unsuccessful. He also said, without any explanation, that after his default on the mortgage payments, it was too late to avoid the foreclosure on House 1. He did not provide any testimony regarding attempts to rent House 1 before defaulting on the mortgage. Following the foreclosure, he was not responsible for the significant deficiency as a result of a state anti-deficiency statute. (Tr. 90, 115-116.)

Credit Union Line of Credit Account Charged-Off in the Amount of $24,352, SOR ¶ 1.c: Applicant admitted this allegation. In 2003, he obtained an unsecured $25,000 line of credit (LOC) from a credit union. He borrowed against the LOC and repaid it several times over the years. More recently, he borrowed about $24,000, possibly in connection with his purchase of House 2 in August 2012, and has not paid anything to the credit union since early 2013. The lender has charged-off the loan. Applicant testified that he intends to repay this loan in the future even though he believes it is no longer an enforceable obligation. He is unable to pay this debt at this time. (Tr. 91-93; GE 8 at 2; AE A at 5-6; AE B at 35.)

Bank Loan Account Charged-Off in the Amount of $16,417, SOR ¶ 1.d: Applicant admitted this allegation. In 2007, he borrowed money to purchase a "travel trailer," which he used as his residence whenever he returned to the United States from his work locations abroad. He financed the purchase with a bank loan of about $16,000. His wife became pregnant with their first child, and Applicant wanted his family to have a house to live in while he worked in Country A. As noted, he and his brother bought House 1 in 2007 for his brother's girlfriend and her children. Applicant co-owned this house so that his wife and child could live in it as well. She only lived there for a brief period, choosing to live with her mother while Applicant was in Country A. Applicant kept making payments on the trailer until "times became too tough," and in 2013, he voluntarily gave it back in a repossession. The trailer was sold at auction, and Applicant is responsible for the deficiency on the outstanding loan balance in the amount of about $7,390. He has made no payments on this debt since the repossession. (Tr. 93-96; GE 8 at 2; AE A at 11.)

Two Delinquent Credit-Card Accounts, Two Delinquent Cellphone Accounts, and a Delinquent Medical Account, SOR ¶¶ 1.e through 1.i: Applicant admits these debts except SOR ¶¶ 1.g (cellphone debt for $91) and 1.i (medical debt for $2,102). Applicant provided no evidence that he has paid the admitted debts, which total about $3,143, since he submitted his June 2018 SOR response. He believes the medical debt and the cellphone debts have been paid. He provided no evidence of payments of these two

debts. He provided a large amount of evidence, but failed to specify the documents reflecting his payments of these two debts. After a careful review of all of Applicant's documentary evidence, I was unable to identify such evidence. Accordingly, these five debts remain unpaid. He has made no payment plans with any of these creditors, nor has he provided evidence that he has tried to contact them regarding these debts. (Tr. 97-100, 117; GE 6 at 3-4, 9; AE A at 8-9, 13-14.)

Applicant has not sought any financial counseling, other than for the tax assistance he received from a CPA. Since he married in 2016, he and his wife combine their finances, and together, they earn a significant income. They live in a modest home and do not have an extravagant lifestyle. (Tr. 63-64, 117; AE K, Q.)

Four character witnesses testified at the hearing. Applicant's immediate supervisor described Applicant as reliable and hard working. She also described him as honest, trustworthy, and a model employee, who consistently meets her deadlines. A co-worker and casual friend testified that Applicant does not have an extravagant lifestyle and spends his available money on his children. This witness described Applicant as trustworthy and honest. Another co-worker and personal friend testified that he sees Applicant outside of work often. He believes that Applicant is trustworthy, honest, and a valuable employee. He explained that Applicant and his family live as permanent residents in a camping facility. He testified that Applicant has lived at the facility for about a year and one-half so that he can save money to buy a house for his family. This friend stated that he has never seen Applicant drink alcohol nor has Applicant ever informed this witness whether or not he drinks alcohol. (Tr. 14-22, 24-29, 31- 37.)

The fourth witness was Applicant's wife. She works as a licensed professional. She has known Applicant for 15 years. During the period October 2011 to May 2012, they had broken up as a couple. She and their two children at the time were living at her mother's residence. She testified that when he returned to the United States in February 2012, they had "broke[n] up because he was out there, and so he quit his job to come home." (Tr. 34-47, 61.)

Applicant's wife testified about his criminal history related to drinking alcohol. He had told his wife about his 2009 DUI incident when he was working in Country A. She was not with him when he was arrested for DUI in 2012 during a two-week leave when he was home, but she received a call from him the next morning asking to be picked up at the police station. She testified that he went to a bar by himself and drank too much. After this incident, he stopped drinking and returned to House 1. At that time, she did not reside at that house. She also testified about his third alcohol arrest in 2013 after they had reconciled and were again living together. She said that he blacked out after drinking alcohol and taking an Ambien pill. She felt that his intoxication was the result of the combination of the alcohol and medication and was accidental. She testified that he has not consumed any alcohol for the last three or four years, though she also testified that she last saw him drink six months prior to the hearing at a party. Her claim that he was abstinent over the preceding six months was contradicted by Applicant and is not credible. (Tr. 38-47, 57-58, 64.)

Applicant's wife also testified about Applicant's finances. His financial difficulties began in 2012 after he quit his job in Country A. He had previously obtained the LOC, and in 2013, he used funds from that account to purchase House 2. She also testified that he "paid cash for [House 2]," explaining that the cash came from his savings from his work in Country A. She testified that he had no job for a period of about 18 months after returning from Country A in February 2012. As a result, he sold the house and made a profit. She did not explain why the LOC was not paid off when the house was sold. She also testified that Applicant's debts started to increase during his unemployment. She said that she was employed during this period. Since he became employed, Applicant has paid pursuant to payment plans the uninsured portions of medical bills he incurred in connection with a surgery. He also paid off a credit card. Neither account is the subject of an SOR allegation. She testified that Applicant had a voluntary repossession of a trailer in 2012. She is unaware of the final status of Applicant's loan on the trailer. She testified that she and Applicant had saved some emergency money by living in a camping facility, but not enough to pay off his debts or to buy a house. (Tr. 48-55.)

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant

has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. *See Egan*, 484 U.S. at 531. "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). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. *See* ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

Analysis

Guideline G, Alcohol Consumption

The security concern under this guideline is set out in AG ¶ 21 as follows:

> 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.

The following disqualifying conditions potentially apply:

> 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(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 ¶ 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 ¶ 22(f): alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder.

The record evidence establishes AG ¶¶ 22(a), (b), and (c). Applicant's DUI convictions in 2012 and 2013, with the second one occurring while he was on probation for his prior conviction, constitute alcohol-related incidents away from work. His 2009 DUI incident while working in a combat zone constitutes an alcohol-related incident at work. The evidence also establishes that Applicant has a long history of abusing alcohol dating back to when he was very young. For many years, he drank alcohol to the point of impaired judgment. He last drank an excessive amount of alcohol a few months before the hearing.

Applicant participated in two periods of alcohol treatment and education. (SOR ¶¶ 1.d, 1.f). Participation in such treatment does not constitute disqualifying conduct under Guideline G, and no disqualifying conditions apply.

SOR ¶ 1.g alleges that, notwithstanding those periods of treatment, Applicant continues to consume alcohol. However, the record evidence does not establish that Applicant was advised or told to abstain from alcohol during his periods of treatment. He was also not diagnosed with an alcohol use disorder. Thus, the allegation set forth in SOR ¶ 1.g is not established as disqualifying conduct. AG ¶ 22(f) does not apply to SOR ¶ 1.g.

The following mitigating conditions are potentially applicable:

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;

AG ¶ 23(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; and

AG ¶ 23(d): the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Applicant's behavior was not so infrequent and did not occur under any unusual circumstances to suggest that it is unlikely to recur. A significant amount of time has passed since his last DUI arrest. He was, however, under the restrictions of probation until late 2018. During the first year of probation, he incurred his second DUI. Subsequently, the penalty of further discipline while on probation kept Applicant from repeating his criminal behavior of drinking and driving under the influence of alcohol. Now that the probationary period has ended, Applicant may still face a serious penalty for a further incident involving drinking and driving, and that may constrain him to avoid such misconduct. His problem with alcohol is not over, however. He continues to drink alcohol at home and socially, even to the point of intoxication at a party earlier in 2019. His failure to seek out and develop a trained support network, as in Alcoholics Anonymous, increases the risk of future abuse of alcohol. Applicant's overall behavior with alcohol casts doubt about his current reliability, trustworthiness, and good judgment. AG ¶ 23(a) is only partially established.

Applicant acknowledges that he can no longer risk drinking and driving because the penalty for that would no longer be just probation. He has modified his consumption and drinks alcohol at home with his wife in a reasonable manner and infrequently. But as recently as a few months before the hearing, he drank alcohol excessively in a social setting. Although he provided a large amount of documentary evidence, I was unable to identify any evidence of any treatment recommendations. Accordingly, he has not established a clear pattern of compliance with any treatment recommendations. AG ¶ 23(b) is only partially established.

Applicant was ordered by a court to participate in an 18-month program for the treatment of second-time DUI offenders. After a period of excessive absenteeism, he eventually completed the program, but took no further steps to ensure that his modified use of alcohol will continue through both stable periods in his life and periods of instability and stress. He does not participate in AA and does not have a sponsor or a person trained to provide the kind of intensive support as an AA sponsor does in the event of a significant breakdown in Applicant's life. This presents a serious risk for someone who has a virtually life-time history of alcohol abuse and undercuts a conclusion that he has demonstrated a clear and established pattern of modified consumption in accordance with treatment recommendations. AG ¶ 23(d) is only partially established.

Guideline F, Financial Considerations

The security concern under this guideline is set out in AG ¶ 18 as follows:

> 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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. *See* ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions in his SOR response, his testimony, and the documentary evidence in the record establish the following potentially disqualifying conditions under this guideline: AG ¶¶ 19(a) ("inability to satisfy debts"); 19(c) ("a history of not meeting financial obligations") and 19(f) ("failure to file . . . annual Federal, state, or local income tax returns . . . as required.") Accordingly, further review is necessary.

The following mitigating conditions are potentially applicable:

> AG ¶ 20(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;
>
> 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 separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
>
> AG ¶ 20(c): the individual has received or is receiving financial 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;
>
> 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(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20(a) is not established. An applicant's ongoing, unpaid debts reflect a continuing course of conduct and, therefore, must be viewed as "recent" for the purposes of this Guideline F mitigating conditions. ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017). Applicant's multiple, unpaid debts render them frequent. The only unusual circumstance that Applicant encountered was that he came home from Country A in 2012 with significant savings and spent those funds to purchase House 2 with cash, and possibly with funds borrowed on the LOC, while he was unemployed, rather than use his savings to pay his bills while he sought employment. He could have rented a home for

his family and waited to buy a house once he found new, full-time employment. This behavior, coupled with his failure to pay his delinquent bills once he was again employed, casts doubts upon his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) is not established. In 2012 and part of 2013, Applicant experienced a lengthy period of unemployment and a further period of possible underemployment. Since then, he has been employed and his wife has worked as well. In addition to choosing to default on his obligation to repay his mortgage loan on House 1, Applicant bought House 2 using his savings. He also loaned his brother $17,000 so that his brother could buy a new house. Applicant has not made payments on several debts that arose six or seven years ago, even after he sold House 2. His mortgage lender suffered a significant loss on House 1 due to Applicant's immature actions, and his other creditors have been forced to charge off his debts. He has not acted responsibly under the circumstances.

AG ¶ 20(c) is not established. Applicant has not sought out or received financial counseling from a legitimate and credible source. Moreover, there are no indications that his financial problems are being resolved or are under control.

AG ¶ 20(d) is not established. While Applicant claims that he has repaid some creditors, Applicant has not initiated a good-faith effort to repay the long-overdue debts alleged in the SOR or to otherwise resolve these debts.

AG ¶ 20(g) is established. While the record is unclear whether Applicant filed his 2010 tax returns or why he did not file his 2011 and 2012 tax returns in a timely fashion after he returned to the United States in early 2012, the evidence establishes that he did ultimately file his 2011 and 2012 tax returns and pay his overdue taxes. He has also timely filed his tax returns since then. His mistakes in filing his tax returns late a number of years ago have been mitigated by his compliance with his tax obligations since then.

Guideline E, Personal Conduct

The security concern under this guideline is set out in AG ¶ 15 as follows:

> 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.

The following disqualifying condition potentially applies:

> AG ¶ 16(c): 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 individual may not properly safeguard classified or sensitive information.

The record evidence establishes this potentially disqualifying condition and the general security concerns referred to in AG ¶ 15 regarding questionable judgment and an unwillingness to comply with rules and regulations, in this case with rules regarding the use of illegal drugs while holding a security clearance and criminal laws regarding drinking and driving. Though the evidence of Applicant's alcohol and financial delinquencies are alone disqualifying, his one-time use of marijuana in 2011 after having been granted a security clearance may not be disqualifying if considered alone. When all of the national security concerns raised in the SOR allegations as well as those cross-referenced in SOR ¶ 3.b, and established by the record evidence are considered as a whole, there exists significant evidence that supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, an unwillingness to comply with rules and regulations, and other characteristics indicating that Applicant may not properly safeguard classified or sensitive information. AG ¶ 16(c) applies.

The following mitigating condition is potentially applicable:

AG ¶ 17(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.

AG ¶ 17(c) is not established. The offenses are not minor and are frequent. Applicant continues to drink to excess, and his financial delinquencies have been continuing for years, and therefore, are current. The record evidence supports the conclusion that Applicant's behaviors are likely to recur and cast doubt on his reliability, trustworthiness and judgment.

Whole-Person Analysis

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. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances and applying the adjudicative factors in AG ¶ 2(d), specifically:

(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.

I have incorporated my comments under Guidelines G, F, and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Some of the factors in AG ¶ 2(d) were addressed above, but other factors warrant additional comment.

I have taken into consideration Applicant's age and maturity, but I find his continued consumption of alcohol and his irresponsible handling of his finances to be inconsistent with his age. These behaviors evidence a lack of maturity. His character references attest to his integrity and character, but his actions are again inconsistent. Since the issuance of the SOR in 2016, Applicant has had sufficient time to take concrete steps to obtain the help he needs to avoid future abuse of alcohol and to address his financial problems, but he has done neither. The limited steps Applicant has taken to address the security concerns raised by the admitted SOR allegations are insufficient to mitigate the serious security concerns about his reliability and trustworthiness raised by his long-history of immature behavior and significant errors in judgment.

After weighing the disqualifying and mitigating conditions under Guidelines G, F and E, and evaluating all of the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by the record evidence in this case.

Formal Findings

Guideline F, Financial Considerations:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b through 1.i:	Against Applicant
Guideline G, Alcohol Consumption:	AGAINST APPLICANT
Subparagraphs 2.a through 2.c, and 2.e:	Against Applicant
Subparagraphs 2.d, 2.f, and 2.g:	For Applicant
Guideline E, Personal Conduct	AGAINST APPLICANT
Subparagraphs 3.a and 3.b:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interests of the United States to continue Applicant's national security eligibility for access to classified information. Clearance is denied.

John Bayard Glendon
Administrative Judge