



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



In the matter of:)
)
) ISCR Case No. 18-01212
)
Applicant for Security Clearance)

Appearances

For Government: Erin Thompson, Esq., Department Counsel
For Applicant: *Pro se*

01/09/2020

Decision

HARVEY, Mark, Administrative Judge:

Applicant presented some important mitigating information; however, he failed to fully mitigate security concerns arising under Guidelines F (financial considerations), G (alcohol consumption), and H (drug involvement and substance misuse). Eligibility for access to classified information is denied.

Statement of the Case

On December 21, 2016, Applicant completed and signed a Questionnaire for National Security Positions or security clearance application (SCA). (Government Exhibit (GE) 1) On July 6, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Specifically, the SOR set forth security concerns arising under Guidelines F, G, and H. (HE 2) On August 9, 2018, Applicant responded to the SOR and requested a hearing. (HE 3)

On February 28, 2019, the case was assigned to another administrative judge. On March 5, 2019, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for March 22, 2019. The hearing was held as scheduled. On July 19, 2019, the administrative judge issued a decision denying Applicant's access to classified information.

On October 23, 2019, the DOHA Appeal Board remanded the decision "with recommendation that the case be assigned to another Judge for a new hearing and proceedings consistent with the Directive." ISCR Case No. 18-01212 at 6 (App. Bd. Oct. 23, 2019). The Appeal Board also asked that three missing exhibits be included in the hearing file. (Applicant Exhibit (AE) N-P)

On November 7, 2019, the case was assigned to me. On November 21, 2019, DOHA issued a hearing notice setting the video teleconference hearing for December 18, 2019. (HE 1) The hearing was held as scheduled.

During the hearing, Department Counsel offered 8 exhibits; Applicant offered 16 exhibits; there were no objections; and all proffered exhibits were admitted into evidence. (Transcript (Tr.) 7-14, 16, 36-38; GE 1-8; AE A-P) The same exhibits were admitted at the second hearing as were admitted in the original hearing. I granted Applicant's request for additional time to submit documentation. On December 30, 2019, DOHA received a transcript of the hearing. I received two post-hearing exhibits, which were admitted into evidence without objection. (AE Q; AE R) The record closed on January 3, 2020. (Tr. 39, 79)

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript.

Procedural Matters

Amendment to SOR

On November 13, 2019, Applicant received an amendment to the SOR. SOR ¶ 3.a alleged under Guideline H that Applicant "used Xanax, which was not prescribed to [him], on at least three occasions, until at least 2018, while [he] held a security clearance." On November 13, 2019, Applicant responded:

I object to the amendment to the statement of reasons. I deny the amendment to the statement of reasons on the following grounds that my original charges were dismissed and a lesser [charge] was pleaded to, therefore any evidence used against me in an amendment that [was] obtained from the original charges should not be admitted because the original charges were dropped. (Tr. 65, 67; HE 3)

An allegation in the SOR is not evidence but merely an allegation. An allegation in the SOR provides notice of the Government's security concerns. The Government has the obligation and burden to present evidence to support contested SOR allegations. An amendment to the SOR is not contingent upon a finding of guilty in a criminal proceeding. Appellant objected to SOR ¶ 3.a during his hearing. (Tr. 14-16) I overruled his objection to the amendment, but reminded him that he would have a full opportunity to contest the allegation during his hearing. (Tr. 15)

Admissibility of Transcript of Previous Hearing

The Appeal Board ordered a new decision. I granted Applicant's request that the transcript from the previous hearing not be considered. (Tr. 16) I advised Applicant that Department Counsel could ask Applicant questions about the content of the transcript; however, the transcript itself was not admitted as an exhibit and was not considered. (Tr. 17) All citations in this decision are to the transcript of the hearing held on December 18, 2019.

Findings of Fact

In Applicant's SOR response, he admitted the SOR allegations in ¶¶ 1.a through 1.h, 2.a, 2.b, and 2.c. (HE 3) He denied the allegations in SOR ¶¶ 1.i and 3.a. He also provided extenuating and mitigating information. His admissions are accepted as findings of fact.

Applicant is a 46-year-old senior systems administrator working for a defense contractor. (Tr. 18-20; GE 1) In 1992, he graduated from high school, and in 1996, he graduated from college. (Tr. 19) He has never served in the military. (Tr. 19) He majored in computer science. (Tr. 19) He has never married, and he has four children who are ages 13, 19, 23, and 25. (Tr. 18) Since 1996, he has been employed working for a defense contractor without periods of unemployment until his security clearance was revoked on July 19, 2019. (Tr. 20) He has held a DOD security clearance for at least 20 years. (Tr. 25, 71) There is no evidence of a security violation.

When Applicant's security clearance was revoked, he lost his employment with a DOD contractor, and he filed for unemployment. (Tr. 26) Despite having 20 years of information technology experience and a college degree, he was unable to find information technology employment without a security clearance. (Tr. 26) He found it heartbreaking to be unable to use his skills to contribute to DOD. (Tr. 26) On November 1, 2019, he found employment, but now he has to commute 51 miles from his home on dangerous highways, and for reduced pay. (Tr. 26)

Applicant explained the source of his financial problems and why he should have a security clearance:

For 25 years I've performed my duties as a government contractor with prior loyalty and commitment. I was excited about the work I was doing as a senior system administrator for the [DOD contractor] and looking forward to the opportunities ahead of me with a top secret security clearance as high-performance computing continues to advance. I was good at my job; my co-

workers held me with high regards. As you can see by the performance reviews and letters of recommendation provided.

* * *

I'm a good person who has made some mistakes, but I would never sell classified information. I love my country; I may have [fallen] upon some hard times financially, been the sole source of income with dependent children. I may have gotten into trouble when my mom was sick and the mother of my children left home after 20 years together.

I was taking care of my sick mom and dealing with the pain of a love lost. I admit my mistakes; I have learned from my mistakes, and I've grown and moved on from my mistakes. I am worthy of a top secret clearance, and I will serve my country well with it just as I did with my secret clearance.

However, Your Honor, if you do [not] see fit for me to have a top secret clearance, I ask you [to grant my request] to keep my secret clearance, which was revoked, so I can find work closer to home and not have to travel up and down a dangerous highway. (Tr. 25-27, 35)

Financial Considerations

The SOR alleges the following financial allegations:

SOR ¶ 1.a alleges that Applicant owes \$4,860 for a charged-off debt. Applicant incurred the debt to install floors in his residence. (Tr. 41) On March 22, 2019, the creditor offered to settle the debt for \$2,916; however, the payment would have to be made by the March 29, 2019, or the settlement offer would be null and void. (AE N) Applicant failed to provide any documentation showing that he settled this account or made payments to the creditor. (Tr. 41-42; GE 2; GE 3; GE 4)

SOR ¶¶ 1.b and 1.i allege that Applicant owes about \$2,000 for a charged-off credit card account. On March 22, 2018, the creditor obtained a judgment against Applicant for \$1,838. (GE 7) Applicant settled this credit card debt after making two \$800 payments in late 2018. (Tr. 42-43; GE 3; AE E) On October 5, 2018, the creditor wrote that the debt was settled. (AE E)

SOR ¶ 1.c alleges that Applicant owes \$927 for a telecommunications account referred for collection. Applicant made some payments on this account, and he returned equipment to the creditor. (Tr. 43-45) On April 13, 2019, the creditor wrote the balance owed was \$536. (AE O) The current remaining balance owed to this creditor is about \$450. (Tr. 45-46; GE 3; GE 4; AE G; AE H; AE O) He would have made more payments except he was unemployed after he lost his security clearance. (Tr. 46)

SOR ¶ 1.d alleges that Applicant owes \$141 for his car insurance. He provided documentation with his SOR response showing that he paid this debt. (Tr. 46-47; GE 3; GE 4)

SOR ¶ 1.e alleges that Applicant owes \$102 for a medical account referred for collection. Applicant provided a receipt with his SOR response showing that this account was paid. (Tr. 47; GE 3)

SOR ¶ 1.f alleges that Applicant owes \$21,777 in delinquent Federal income taxes for tax years 2015 and 2016. In March 2015, a creditor forgave a mortgage debt for \$25,526, and the IRS determined he received income when the creditor forgave this debt. (Tr. 48-49; GE 1 at 36-37; GE 2 at 29; GE 5 at 32; AE J) He also withdrew \$24,000 from his 401(k) account and was unable to repay his account in time to avoid a federal income tax penalty. (Tr. 48-49) In his December 21, 2016 SCA, Applicant stated he was in a payment plan, and he was making \$228 monthly payments to the Internal Revenue Service (IRS). (GE 1 at 37-38; GE 2 at 29) Applicant subsequently stopped making his monthly payments. (Tr. 48; GE 2 at 29) His plan was “to let them take my income tax [refund] in addition to [his] monthly payments.” (Tr. 28; GE 5)

As of May 2018, the IRS tax transcript for tax year 2015 showed that Applicant owed \$14,353. His 2016 tax transcript showed that his delinquent tax debt was \$7,424. Applicant’s 2017 tax refund was intercepted and applied to his delinquent accounts owed for tax years 2013, 2014, and the remainder of \$1,917 was applied to his debt for tax year 2015. (GE 5)

The following table summarizes the tax information from state and federal tax transcripts. Federal adjusted gross income is rounded to the nearest \$1,000.

Tax Year	Federal Adjusted Gross Income	Tax Refund or Due		Exhibit
		State Refund (+S) Federal Refund (+F)	State Due (-S) Federal Due (-F)	
2012	\$69,000	\$167 (+S); \$385 (-F)		GE 6 at 3; GE 5 at 1
2013	\$65,000	\$450 (+S); \$1,578 (-F)		GE 6 at 5; GE 5 at 2
2014	\$66,000	\$358 (+S); \$2,109 (-F)		GE 6 at 8; GE 5 at 4-5
2015	\$129,000	\$2,053 (-S); \$14,259 (-F)		GE 6 at 11; GE 5 at 6-7
2016	\$90,000	\$271 (-S); \$7,450 (-F)		GE 6 at 14; GE 5 at 8-9
2017	\$73,000	\$542 (+S); \$4,086 (+F)		GE 6 at 17; GE 5 at 10

For tax year 2012, Applicant paid the IRS \$385 in April 2014, resolving his tax debt for tax year 2012. (GE 5 at 1) For tax year 2013, he made payments to the IRS in February 2015, April 2015, and April 2016. (GE 5 at 2-3) His payments in August and September 2017 were dishonored. (GE 5 at 3) In February 2018, the IRS transferred a \$281 credit from tax year 2017, and his tax debt for tax year 2013 was resolved. (GE 5 at 2-3)

In 2017, the IRS dishonored three payments toward his tax debt for tax year 2014. (GE 5 at 5) In February 2018, the IRS transferred a \$2,695 credit from tax year 2017, and his tax debt for tax year 2014 was resolved. (GE 5 at 5)

For tax year 2015, Applicant made \$227 payments in April and November 2016. (GE 5 at 7) In February 2018, the IRS transferred a \$1,917 credit from tax year 2017. (GE 5 at 7) The balance owed was \$14,353 as of May 25, 2018. (GE 5 at 6)

For tax year 2016, Applicant made the following payments: \$100 (August 2017); \$200 (September 2017); \$328 (October 2017); and \$328 (December 2017). (GE 5 at 8) The balance owed as of May 25, 2018, is \$7,424. (GE 5 at 8)

In sum, Applicant's federal income taxes for tax years 2013 and 2014 were delinquent until Applicant's refund for tax year 2017 was transferred in February 2018. (GE 5 at 10) As of May 25, 2018, his tax debt for tax years 2015 and 2016 is \$21,777. (GE 5) He did not provide proof of any federal income tax payments to address his ongoing tax debt for tax years 2015 and 2016 after December 2017.

SOR ¶ 1.g alleges that Applicant owes \$2,466 for a state tax lien entered against him in 2017. On October 14, 2019, the state obtained a judgment against Applicant for \$2,466. (GE 6) Applicant planned to gradually reduce the debt through the state taking his refunds, and then he would pay off the debt when it was low enough. (Tr. 50; GE 5 at 30) Applicant did not have a state-approved payment plan to address this debt. (Tr. 50)

SOR ¶ 1.h alleges that Applicant owes real estate taxes to a city totaling approximately \$9,000 for tax years 2008 through 2016. Applicant stopped paying his real estate taxes in 2008. (GE 5 at 30-31) In 2016, he made \$225 monthly payments for several months. (GE 5 at 31) In June 2016, he received a \$9,000 bill for real estate taxes. (GE 5 at 31) Applicant said he is making monthly \$50 payments, and he paid \$51 in March 2019, September 2019, and December 2019. (Tr. 51; GE 2; GE 5 at 31; AE I, AE J; AE R)

Applicant's gross annual income was about \$82,000 before his security clearance was revoked. (Tr. 53) His adjusted gross income on his federal income tax return for tax years 2015 and 2016 were anomalous because a creditor forgave a mortgage debt and his withdrawal from his 401(k) account resulted in a higher income than he actually had available to pay his debts. (Tr. 53) He started new employment on November 1, 2019, and his new salary is \$70,000 annually. (Tr. 55)

Alcohol Consumption

SOR ¶ 2.a alleges that Applicant was arrested in March 2015 for speeding and operating a vehicle while under the influence of alcohol (OVI). The police stopped Applicant for speeding, and they smelled alcohol on his breath. (Tr. 56) Applicant said he did not remember his breathalyzer test or blood alcohol test (BAT) result. (Tr. 56) However, he conceded his BAT result was above the legal limit. (Tr. 72) The court record shows a .14 BAT result. (GE 8 at 1, 3) Applicant pleaded guilty to OVI first offense, and the speeding charge was dismissed. (SOR response) Applicant was sentenced to a fine and court costs, 180 days in jail with 177 days suspended, and one year of probation. (GE 8 at 1) Applicant was required to attend a three-day alcohol awareness course and

his driver's license was suspended for six months. (Tr. 56; GE 1; GE 2; GE 8; SOR response)

SOR ¶ 2.b alleges that Applicant was arrested in May 2016 and charged with OVI and physical control. Applicant had consumed some alcohol. He was on his way home, and he decided to pull over to the side of the road where he fell asleep. (Tr. 58-59) The police arrived and arrested him. The police said he did not blow into the breathalyzer hard enough to register, and the police declared it to be a refusal. (Tr. 72) He pleaded guilty to physical control, and the OVI was dismissed. (Tr. 59; SOR response; GE 8 at 5) He was fined, paid court costs, and placed on five years of community control. (Tr. 73; GE 1, GE 2, GE 8) Applicant was unsure what "community control" entailed. (Tr. 73-74) During his Office of Personnel Management (OPM) interview, he said he was prohibited from having any similar incidents. (GE 2 at 26)

SOR ¶ 2.c alleges that Applicant was arrested in April 2018 for physical control of vehicle while under the influence of alcohol. Applicant was moving his vehicle in the driveway of his residence and honking the horn at his cohabitant who was inside the residence. (GE 2 at 17) His cohabitant called the police. (GE 2 at 17) The police described Applicant as being "highly intoxicated." (GE 2 at 17, 21) His speech was slurred, and he was unable to stand without assistance. (GE 2 at 21) Applicant told the police "he had been drinking all day and night." (GE 2 at 18) He refused a breathalyzer test. (Tr. 73) The police seized a Xanax pill that was in his pocket. (GE 2 at 18) Applicant was initially charged with physical control and possession of drugs, but he pleaded guilty to an amended charge of reckless operation, and the possession of drugs charge was dismissed. (Tr. 60-61; GE 8 at 7)

There is no evidence that Applicant was diagnosed with an alcohol-use disorder. Applicant did not attend any Alcoholics Anonymous meetings or receive any other outpatient treatment for alcohol consumption. (Tr. 73) His most recent consumption of alcohol was 30 days before his hearing when he consumed two or three beers. (Tr. 74-75)

Drug Involvement and Substance Misuse

The SOR alleges in ¶ 3.a that Applicant used Xanax, without a prescription, on at least three occasions, until at least 2018, while he held a security clearance. When Applicant was arrested in April 2018, the police searched him and found a green pill inside a baggie in his pants pocket. (Tr. 62; GE 2 at 18) Applicant stated, "Oh, that's just my Xanax." (Tr. 62; GE 2 at 18) Xanax is a Schedule IV Controlled Substance. Applicant told the police that he did not have a prescription for the Xanax. (Tr. 62; GE 2 at 18) At his hearing, Applicant said that he did not "have any recollection" of having Xanax in his pocket when he was arrested, and he "was made aware of it when [he] read his [police] statement." (Tr. 63) He did not remember telling the police officer the pill was Xanax. (Tr. 75) Applicant suggested he may not remember what he told the police because he was intoxicated. (Tr. 75)

The possession of Xanax charge was subsequently dismissed. Applicant admitted that he took Xanax at least once as recently as 2018. (Tr. 67-69) He was uncertain how many times he used Xanax, and he refused to estimate how many times he took Xanax without a prescription. (Tr. 67-69) He has never had a prescription for Xanax. (Tr. 71)

Character Evidence

The mother of Applicant's children described him as a good provider and father figure. (Tr. 29, 33) She has lived with him most of the time for 23 years. (Tr. 30) In the past year, he dramatically reduced his alcohol consumption because of health concerns relating to high blood pressure and cholesterol. (Tr. 30, 33-34) She has not seen him drink any alcohol for six months. (Tr. 31) They have not had any alcohol in their home for six months. (Tr. 31-32) She does not use illegal drugs, and she is unaware of the presence of any illegal drugs in their home. (Tr. 32)

Five coworkers, colleagues, and/or friends provided character statements supporting reinstatement of Applicant's access to classified information. (AE A; AE B; AE C; AE D; AE Q) The general sense of their statements is that Applicant is honest, diligent, knowledgeable, intelligent, generous, courteous, loyal, respectful, kind, reliable, and trustworthy. (AE A; AE B; AE C; AE D) His performance evaluations describe him as an excellent employee who made substantial contributions to mission accomplishment. (AE K; AE L; AE P) He received salary increases in 2015 (\$1,094) and 2016 (\$1,034). (AE K; AE L)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *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 applicant's 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.

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, these guidelines are applied 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, 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 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 “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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. . . .

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.

AG ¶ 19 includes disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(b) unwillingness to satisfy debts regardless of the ability to do so"; "(c) a history of not meeting financial obligations"; and "(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required." The record evidence establishes AG ¶¶ 19(b), 19(c), and 19(f).

AG ¶ 20 lists financial considerations mitigating conditions which may be applicable in this case:

(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 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;

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

(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;

(f) the affluence resulted from a legal source of income; and

(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.

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant presented some important mitigating information. Applicant paid or settled the debts in SOR ¶¶ 1.b, 1.d, 1.e, and 1.i. He made significant progress resolving the debt in SOR ¶ 1.c. He indicated his mother's illness and large family contributed to his financial woes; however, he did not provide enough evidence that his financial problems were largely beyond his control and that he acted reasonably under the circumstances. His income from 2013 to present was relatively constant (excluding the forgiveness of his mortgage debt and withdrawal from his 401(k) account). He did not have any periods of unemployment in the last 20 years prior to the revocation of his security clearance.

Applicant did not timely pay and has not paid his local real estate tax for 11 years. His federal income taxes have been delinquent since 2013, and his state income taxes have been delinquent since 2016. He did not make any payments to address the debt in SOR ¶ 1.a. He did not establish that he was unable to make greater progress sooner paying his tax debts.

Applicant's SOR does not allege he did not pay his federal taxes in full when due for tax years 2012, 2013, and 2014. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

(a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

Id. (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See also ISCR Case No. 12-09719 at 3 (App. Bd. Apr. 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). The non-SOR allegations will not be considered except for the five purposes listed above.

Applicant has not corrected his tax problems. The Appeal Board clarified that even in instances where an “[a]pplicant has purportedly corrected [his or her] federal tax problem, and the fact that [applicant] is now motivated to prevent such problems in the future, does not preclude careful consideration of [a]pplicant’s security worthiness in light of [his or her] longstanding prior behavior evidencing irresponsibility.” See ISCR Case No. 15-01031 at 3 and note 3 (App. Bd. June 15, 2016) (characterizing “no harm, no foul” approach to an Applicant’s course of conduct and employing an “all’s well that ends well” analysis as inadequate to support approval of access to classified information). In ISCR Case No. 15-06440 at 4 (App. Bd. Dec. 26, 2017), the Appeal Board reversed the grant of a security clearance, discussed how AG ¶ 20(g) applied, and observed:

The timing of the resolution of financial problems is an important factor in evaluating an applicant’s case for mitigation because an applicant who begins to resolve financial problems only after being placed on notice that his clearance was in jeopardy may lack the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his own interests. In this case, Applicant’s filing of his Federal income tax returns for 2009-2014 after submitting his SCA, undergoing his background interview, or receiving the SOR undercuts the weight such remedial action might otherwise merit.

In sum, there is insufficient evidence about why Applicant was unable to make greater progress sooner resolving his delinquent tax debt and one delinquent commercial debt. There are not clear indications his financial problems are under control. Applicant failed to establish mitigation of financial considerations security concerns.

Alcohol Consumption

AG ¶ 21 articulates the Government’s concern about alcohol consumption, “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.”

AG ¶ 22 lists conditions that could raise a security concern and may be disqualifying in this case including:

(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;

(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

(g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

AG ¶¶ 22(a) and 22(c) apply; however, ¶ 22(g) does not apply. Applicant had three alcohol-related driving incidents involving the police and/or the courts from 2015 to 2018. His BAC for the first alcohol-related driving offense was .14. He was also very intoxicated at the time of his 2018 arrest. “Binge drinking is the most common pattern of excessive alcohol use in the United States.” See the Center for Disease Control website, (stating “The National Institute on Alcohol Abuse and Alcoholism defines binge drinking as a pattern of drinking that brings a person’s blood alcohol concentration (BAC) to 0.08 grams percent or above. This typically happens when men consume 5 or more drinks, and when women consume 4 or more drinks, in about 2 hours.”), <https://www.cdc.gov/alcohol/fact-sheets/binge-drinking.htm>. There are other definitions of “binge alcohol consumption” that involve different alcohol-consumption amounts and patterns. He engaged in binge-alcohol consumption to the extent of impaired judgment. Even though he was arrested in 2018 for an alcohol-related incident, AG ¶ 22(g) does not apply because it was unclear what his five years of “community control” after his 2016 alcohol-related arrest entailed. No request was made that he contact the court and provide a copy of the requirements for “community control” to complete the hearing record.

AG ¶ 23 details conditions that could mitigate security concerns including:

(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;

(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 demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Security clearance cases are difficult to compare, especially under Guideline G, because the facts, degree, and timing of the alcohol abuse and rehabilitation show many

different permutations. The DOHA Appeal Board has determined in cases of substantial alcohol abuse that AG ¶ 23(b) did not mitigate security concerns unless there was a fairly lengthy period of abstaining from alcohol consumption or responsible alcohol consumption. See ISCR Case No. 06-17541 at 3-5 (App. Bd. Jan. 14, 2008); ISCR Case No. 06-08708 at 5-7 (App. Bd. Dec. 17, 2007); ISCR Case No. 04-10799 at 2-4 (App. Bd. Nov. 9, 2007). See also ISCR Case No. 08-04232 (App. Bd. Oct. 9, 2009) (affirming denial of security clearance for Applicant with alcohol-related criminal offenses for six years prior to hearing). For example, in ISCR Case No. 05-16753 at 2-3 (App. Bd. Aug. 2, 2007) the Appeal Board reversed the administrative judge's grant of a clearance and noted, "That Applicant continued to drink even after his second alcohol-related arrest vitiates the Judge's application of MC 3."

In ISCR Case No. 05-10019 at 3-4 (App. Bd. Jun. 21, 2007) the Appeal Board reversed an administrative judge's grant of a clearance to an applicant (AB) where AB had several alcohol-related legal problems. However, AB's most recent DUI was in 2000, six years before an administrative judge decided AB's case. AB had reduced his alcohol consumption, but still drank alcohol to intoxication, and sometimes drank alcohol (not to intoxication) before driving. The Appeal Board determined that AB's continued alcohol consumption was not responsible, and the grant of AB's clearance was arbitrary and capricious. See also ISCR Case No. 04-12916 at 2-6 (App. Bd. Mar. 21, 2007) (reversing grant of a security clearance where most recent alcohol-related incident was three years before hearing because of overall history of alcohol consumption).

In ISCR Case No. 18-02526 (App. Bd. Dec. 20, 2019) the applicant "drove vehicles on three occasions while impaired by alcohol between 2000 and 2017." *Id.* at 4. The applicant participated in alcohol-related therapy and counseling, and he abstained from alcohol consumption for two years. *Id.* at 2. The Appeal Board emphasized the lack of an established benchmark period of abstinence from alcohol consumption stating:

As we have previously stated, the Directive does not specify how much time must pass to mitigate the various types of misconduct identified in the adjudicative guidelines. Contrary to the Judge's conclusion, the Board has repeatedly declined to establish a "benchmark" or "bright-line" rule for evaluating the recency of misconduct. The extent to which security concerns have become mitigated through the passage of time is a question that must be resolved based on the evidence as a whole.

Id. at 3 (citing ISCR Case No. 18-01926 at 4 (App. Bd. Sept. 20, 2019) (reversing grant of security clearance for applicant with three alcohol-related driving incidents with most recent occurring in 2017)).

I have carefully considered the Appeal Board's jurisprudence on alcohol consumption and Applicant's history of alcohol consumption. He reduced his alcohol consumption in 2018, and he abstained from alcohol consumption beginning one month before his hearing. In 2015, he completed a three-day alcohol awareness course; however, he had two alcohol-related incidents after he completed the course. He has not had any alcohol-related incidents involving the police or courts since April 2018. Not

enough time has elapsed since April 2018, when he was most recently involved with the police in an alcohol-related incident, to enable a reasonable predictive judgment that his maladaptive use of alcohol is safely in the past. He is not in a current alcohol counseling or treatment program. I have lingering doubts and concerns about Applicant's current reliability, trustworthiness, and good judgment pertaining to his history of alcohol consumption. Alcohol consumption security concerns are not mitigated.

Drug Involvement and Substance Misuse

AG ¶ 24 provides the security concern arising from drug involvement and substance misuse stating:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. Controlled substance means any "controlled substance" as defined in 21 U.S.C. 802. Substance misuse is the generic term adopted in this guideline to describe any of the behaviors listed above.

AG ¶ 25 provides conditions that could raise a security concern and may be disqualifying in this case including:

- (a) any substance misuse (see above definition);
- (c) illegal possession of a controlled substance. . . ; and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant held a security clearance for 20 years until at least April 2018. He used Xanax at least once as recently as 2018. In April 2018, he possessed a Xanax pill which was seized by the police. Schedules I, II, III, IV, and V, as referred to in the Controlled Substances Act, are contained in 21 U.S.C. § 812(c). Xanax is a Schedule IV controlled substance. <https://www.dea.gov/drug-scheduling>. Xanax is a benzodiazepine and a prescription drug. "Tolerance can develop, although at variable rates and to different degrees." See *Drugs of Abuse, A DEA Resource Guide: 2017 Ed.*, at 59, https://www.dea.gov/sites/default/files/drug_of_abuse.pdf. Xanax is used "to treat insomnia in patients with daytime anxiety." *Id.* AG ¶¶ 25(a), 25(c), and 25(f) are established.

AG ¶ 26 lists conditions that could mitigate security concerns:

(a) the behavior happened so long ago, was so infrequent, or happened under such 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 drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:

(1) disassociation from drug-using associates and contacts;

(2) changing or avoiding the environment where drugs were used; and

(3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility;

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and

(d) satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

None of the mitigating conditions fully apply; however, Applicant provided some important mitigating information. He was honest about his abuse of Xanax. He has not resumed Xanax use without a prescription after 2018. There is no evidence of his continuing involvement with persons who use Xanax or any other prescription drug illegally.

The evidence against mitigation is more persuasive. Applicant did not present any evidence of drug-related therapy and counseling. Applicant's Xanax abuse is too recent and occurred while he held a security clearance. The discovery of his Xanax abuse occurred as the result of an alcohol-related arrest. The risk that Applicant may abuse Xanax in the future cannot be ruled out. Guideline H security concerns are not mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(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.

Under AG ¶ 2(c), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall commonsense judgment based upon careful consideration of the guidelines” and the whole-person concept. My comments under Guidelines F, G, and H are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is a 46-year-old senior systems administrator working for a defense contractor. In 1996, he graduated from college where he majored in computer science. He has four children who are ages 13, 19, 23, and 25. Since 1996, he has been employed working for a defense contractor without periods of unemployment until his security clearance was revoked. He has held a DOD security clearance for at least 20 years. In the past year, he dramatically reduced his alcohol consumption. He has not consumed any alcohol for one month before his hearing. He does not have any alcohol in his home. Five coworkers, colleagues, and/or friends provided character statements supporting reinstatement of Applicant's access to classified information and indicating that Applicant is honest, diligent; knowledgeable, intelligent, generous, courteous, loyal, respectful, kind, reliable, and trustworthy. His performance evaluations and salary increases are evidence that he is an excellent employee who made substantial contributions to mission accomplishment. There is no evidence of security violations.

The evidence against reinstatement of his access to classified information is more persuasive. Applicant has owed delinquent real estate taxes since 2008, delinquent state income taxes since 2016 (tax year 2015), and delinquent federal income taxes since 2013 (taxes owed for tax year 2012 were paid in 2014; taxes for tax year 2013 were paid in February 2018, etc.). He has one delinquent commercial debt for about \$4,860. See ISCR Case No. 14-03358 at 3, 5 (App. Bd. Oct. 9, 2015) (reversing grant of a security clearance, noting \$150,000 owed to the federal government, and stating “A security clearance represents an obligation to the Federal Government for the protection of national secrets. Accordingly failure to honor other obligations to the Government has a direct bearing on an applicant's reliability, trustworthiness, and ability to protect classified information”).

Applicant did not establish reasonable justification for his delay in making greater progress sooner resolving the debts in SOR ¶¶ 1.a, 1.f, 1.g, and 1.h. His actions under the Appeal Board jurisprudence are too little and too late to fully mitigate financial considerations security concerns. Applicant's failure to “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 his reliability, trustworthiness, and ability to protect classified or sensitive information.” AG ¶ 18.

Applicant’s alcohol abuse from March 2015, to April 2018, and his misuse of Xanax without a prescription in April 2018, all while holding a security clearance are too recent and serious to be mitigated under all the facts and circumstances of this case. It is well settled that once a concern arises regarding an applicant’s security clearance eligibility, there is a strong presumption against granting a security clearance. *See Dorfmont*, 913 F. 2d at 1401. I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board’s jurisprudence to the facts and circumstances in the context of the whole person. Applicant failed to mitigate financial considerations, alcohol consumption, and drug involvement and substance misuse security concerns.

Formal Findings

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b through 1.e:	For Applicant
Subparagraphs 1.f, 1.g, and 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraphs 2.a, 2.b, and 2.c:	Against Applicant
Paragraph 3, Guideline H:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

Conclusion

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

Mark Harvey
Administrative Judge