



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 18-00675
)
 Applicant for Security Clearance)

Appearances

For Government: Brian Ferrell, Esq., Department Counsel
For Applicant: Brett O'Brien, Esq.

03/11/2021

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations), G (Alcohol Consumption), and J (Criminal Conduct.). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on August 29, 2016. On December 13, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F, G, and J. The DOD CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on January 27, 2020, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 15, 2020,

and the case was assigned to me on June 23, 2020. On June 29, 2020, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for July 16, 2020. On July 9, 2020, Applicant retained an attorney, who requested that the hearing be postponed. I granted the request, and the hearing was rescheduled for September 2, 2020.

On August 31, 2020, Applicant self-admitted to a long-term alcohol rehabilitation program, and the hearing was postponed indefinitely. It was rescheduled for December 3, 2020, postponed again, and rescheduled for January 13, 2021. I convened the hearing as rescheduled. Government Exhibits (GX) 1 through 15 were admitted in evidence without objection. Applicant testified, presented the testimony of one witness, and submitted Applicant's Exhibits (AX) 1 through 7. AX 1 was not admitted because it duplicated GX 1 through 15. AX 2 through 7 were admitted without objection. (Tr. 10-11.) I kept the record open until February 5, 2021, to enable Applicant to submit additional documentary evidence. He timely submitted AX A, B, and C, which were admitted without objection. AX C consists of numerous sub-sections, and the pages are sequentially numbered from 1-8 and 55-273. DOHA received the transcript (Tr.) on January 27, 2021.

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a, 1.f, 1.g, and 1.j. He denied the allegations in SOR ¶¶ 1.b-1.d, 1.h, 1.i, and 1.k-1.u. He stated, "I agree" to the allegation in SOR ¶ 1.e, but his explanation amounted to a denial. He admitted the allegations in SOR ¶¶ 2.a and 2.b but denied the allegation in SOR ¶ 2.c. He denied the allegation in SOR ¶ 3.a. His admissions in his answer and at the hearing are incorporated in my findings of fact.

General Background Information

Applicant is a 34-year-old employee of a federal contractor. He is the field service lead for a team providing IT support for the senior leadership on a military installation. (Tr. 56-57.) He attended a community college from June 2010 to August 2012 and obtained an associate's degree in computer science. He married in August 2010. He and his wife lived apart for about three years while she was employed in another state. They are now living together. They have no children.

Applicant served on active duty in the U.S. Navy from September 2005 to January 2008 and was honorably discharged for medical reasons. He testified that he was discharged because he has angioedema, a swelling of areas under the skin. His medical records also reflect chronic lower back pain. He has a 30% disability and receives disability pay of about \$456 per month. (Tr. 80.)

Applicant was employed by federal contractors in physical-security jobs from January 2008 to March 2013. He was unemployed from March 2013 to February 2014. He was employed by another federal contractor from February 2014 to September 2014, when he quit that job for a better opportunity. He was employed in the private sector from

September 2014 to August 2016. He worked for a federal contractor in August and September 2016. (GX 1 at 10-16.) He was unemployed from September 2016 to January 2017. (GX 2 at 7.) He has worked for his current employer since February 2017. His SCA reflects that he has never held a security clearance. (GX 1 at 32.) However, in his answer to the SOR, he refers to a reinvestigation of his clearance in 2017-2018, indicating that he has previously held a clearance.

Guideline F, Financial Considerations

The SOR alleges that Applicant has 21 delinquent debts totaling about \$61,348. The evidence concerning these allegations is summarized below.

SOR ¶ 1.a: judgment obtained by a credit union in March 2015 for \$24,582.

Applicant obtained a debt-consolidation loan from his credit union, while he was on active duty. (GX 10 at 1; GX 12 at 10.) He made payments on this loan until he was laid off in March 2013. (Answer at 1.) In March 2015, the credit union obtained a judgment for \$24,582. (GX 3.) In January 2020, the credit union initiated a garnishment of Applicant's pay to satisfy the judgment. The interest, attorney's fees, and garnishment costs increased the amount of the debt to \$46,406, and a hearing on the garnishment was scheduled for May 2020. (AX A-2.) His pay has been garnished in the amount of \$263.66 per week since January 2020. (AX 2.)

SOR ¶ 1.b: judgment obtained by a credit union in March 2015 for \$13,029.

In Applicant's answer to the SOR and at the hearing, he stated that this debt was included in SOR ¶ 1.a. (Answer at 1; Tr. 92.) In March 2015, the credit union obtained a judgment for \$13,029. The judgment alleged in SOR ¶ 1.a and this judgment were initiated on the same day and the both judgments were entered on the same day, but they have different case numbers, indicating two separate debts. (GX 3; GX 4.) This judgment is not satisfied.

SOR ¶ 1.c: judgment obtained by an apartment complex in November 2018 for \$925. In his answer to the SOR, Applicant claimed that this judgment was for a fraudulent debt opened in his name. Court records reflect that a default judgment was entered against him. (GX 5.) At the hearing, he testified that he had never heard of the creditor who obtained the judgment. He has taken no action to resolve it. (Tr. 96-97.)

SOR ¶ 1.d: judgment obtained by a furniture company in February 2018 for \$992. In his answer to the SOR, Applicant claimed that this judgment was for a fraudulent debt opened in his name. Court records reflect that a default judgment was entered against him. (GX 6.) He has taken no action to resolve it. (Tr. 97.)

SOR ¶ 1.e: judgment obtained by an apartment complex in October 2017 for \$2,262. In his answer to the SOR, Applicant claimed that he had a payment agreement with the rental company after being laid off, but new owners refused to honor the agreement and obtained a judgment in October 2017. Court records reflect that the judgment is not satisfied. (GX 7.) Applicant claimed that the amount owed was \$1,100 and the rest of the amount of the judgment was for legal fees. (Answer at 1.) At the

hearing, he testified that he made payments of \$100 per month for six to eight months, but he could not recall why he stopped making payments. (Tr. 99-100.) He provided no documentation of payments. The debt is not resolved.

SOR ¶ 1.f: unpaid court costs and fines of \$356. In Applicant's answer to the SOR, he admitted this debt and said he was using his tax refunds to pay it. (Answer at 1.) Court records reflect that the fines and costs were for failure to appear, resulting in his being charged with contempt of court. (GX 8.) At the hearing, he testified that he believed that he paid them, but he submitted no documentation of payment. (Tr. 100.)

SOR ¶ 1.g: unpaid court costs and fines of \$466. In Applicant's answer to the SOR, he admitted this debt and said he was using his tax refunds to pay it. (Answer at 1.) The fines and costs were for an arrest for driving while intoxicated in April 2016 and a conviction in September 2016. (GX 9.) The arrest and conviction are alleged under Guideline G in SOR ¶ 2.a and reflected in court records in GX 13. SOR ¶¶ 1.f and 1.g allege Applicant's failure to pay the fines and court costs for his September 2016 DWI conviction. He initially testified that he intended to pay them, but when he found that the fines and court costs were being taken from his tax refunds, he decided he would "let them take whatever they needed" and then worry about those that were not paid. (Tr. 64.) Later in the hearing, he testified that he paid this debt in person at the courthouse, but he submitted no documentation of payment. (Tr. 100.)

SOR ¶ 1.h charged-off automobile loan for \$7,102. In Applicant's answer to the SOR, he denied this debt and claimed that it was a fraudulent debt opened in his name. (Answer at 1.) The credit reports reflect that the debt was for an automobile loan opened in January 2015. (GX 10 at 2; GX 11 at 2; GX 12 at 8.) In a personal subject interview (PSI) in August 2017, Applicant told the investigator that he bought a vehicle from a small dealership and financed it with a loan from the dealership. When he received a bill for a large sum of money from the dealership that he could not pay, he surrendered the vehicle. (GX 2 at 8-9.) At the hearing, he admitted that the debt is not resolved. (Tr. 102-03.)

SOR ¶ 1.i: collection account for \$2,118. In Applicant's answer to the SOR, he denied this debt and claimed that it was a fraudulent debt opened in his name. (Answer at 1.) The credit reports reflect that the collection account was opened in January 2015 and that the last activity on the debt was in November 2013. (GX 10 at 2; GX 11 at 2; GX 12 at 13.) In the August 2017 PSI, he told the investigator that this debt had been paid with a loan from the credit union alleged in SOR ¶¶ 1.a and 1.b. (GX 2 at 8-9.) At the hearing, he admitted that he had taken no action to resolve it. (Tr. 103-04.)

SOR ¶ 1.j: student loan placed for collection of \$1,186. In Applicant's answer to the SOR, he admitted this debt and stated that he was making payments on it. (Answer at 1.) He submitted no documentation of payments. At the hearing, he testified that he attended college on the GI Bill and had no student loans. (Tr. 104.) A credit report from May 2019 reflects a student loan referred for collection in August 2013 for \$1,186. (GX 10 at 2.) He has not attempted to resolve this debt. (Tr. 104.)

SOR ¶ 1.k: collection account for \$1,124. In Applicant's answer to the SOR, he denied this debt. In the August 2017 PSI, Applicant told an investigator that this debt had been paid with a debt-consolidation loan from the credit union alleged in SOR ¶¶ 1.a and 1.b. (GX 2 at 8.) At the hearing, he denied this debt, claiming that he has never had an account with the original creditor. (Tr. 105.) The debt is not resolved.

SOR ¶ 1.l: debt to furniture-leasing company charged off for \$836. In Applicant's answer to the SOR, he stated that this was a fraudulent debt. This debt is reflected in the May 2019 credit report as charged off in February 2017. (GX 10 at 2.) At the hearing, he testified that he has made no effort to contract the creditor. (Tr. 105.) The debt is not resolved.

SOR ¶ 1.m: cellphone account referred for collection of \$730. In Applicant's answer, he claimed that the debt was paid when he switched providers and the new provider paid off the old account. The last activity on this account was in May 2013. It was referred for collection in October 2017. (GX 10 at 2.) At the hearing, he testified that he referred this debt to a credit-repair company in 2017 but received no response from the credit-repair company or the creditor. (Tr. 107.) He terminated his contract with the credit-repair company after one year because they made no progress. (Tr. 109.) The debt is not resolved.

SOR ¶ 1.n: credit-union debt charged off for \$569. In Applicant's answer, he stated that this debt was included in a debt-consolidation loan. The creditor for this debt is the same credit union alleged in SOR ¶¶ 1.a and 1.b. It was charged off in September 2014, before the judgments alleged in SOR ¶¶ 1.a and 1.b were entered. (GX 10 at 2.) It is likely that this debt was included in one of the judgments.

SOR ¶ 1.o: utility bill placed for collection of \$306. In Applicant's answer, he stated that this debt was paid, and he has contacted the company to determine the basis for this account. The last activity on this debt was in May 2018. It was placed for collection in October 2018. (GX 10 at 2.) At the hearing, Applicant testified that he still has an account with this company, but he has not contacted the company to determine the basis for this collection account. (Tr. 111.) He did not provide any evidence to show that his account is current.

SOR ¶ 1.p: telecommunication bill placed for collection of \$164. In Applicant's answer, he stated that this was a fraudulent debt. This account was placed for collection in December 2017. (GX 10 at 2.) At the hearing, he testified that he contacted the creditor and was informed that it has no record of this debt. He did not ask the creditor for documentation. (Tr. 112.) The debt is not resolved.

SOR ¶ 1.q: telecommunication bill placed for collection of \$1,516. In Applicant's answer, he stated that this was a fraudulent debt. The service provider for this debt is the same as alleged in SOR ¶ 1.p, but the account number is different. It was placed for collection in July 2016. (GX 11 at 2.) At the hearing, Applicant testified that this debt was for unreturned equipment. (Tr. 113.) He sent an email to the collection agency

on February 1, 2021, asking about the possibility of a payment plan. (AX A-3.) The record does not reflect a response to his inquiry. This debt is not resolved.

SOR ¶ 1.r: satellite television bill placed for collection of \$1,277. In Applicant's answer to the SOR, he stated that this debt was for unreturned equipment and that the equipment was picked up by a representative of the service provider in his presence. (Tr. 113.) It appears that Applicant's testimony at the hearing may have confused this debt with the debt in SOR ¶ 1.q. The date of last activity on this account was in May 2016. It was placed for collection in August 2017. (GX 11 at 2.) At the hearing, he testified that he never had an account with this creditor. (Tr. 114, 138.) On February 1, 2021, after the hearing, Applicant made a payment arrangement providing for monthly \$25 payments, and he made the initial payment. (AX A-1.)

SOR ¶ 1.s: student loan past due for \$500. In Applicant's answer, he stated that this was a fraudulent debt. It is reflected in the September 2016 credit report as a deferred student loan opened in August 2012. (GX 12 at 8.) It is reflected in the January 2018 credit report as more than 180 days past due. (GX 11 at 2.) It is reflected in the May 2019 credit report as a collection account assigned to the government. (GX 10 at 2.) At the hearing, Applicant testified that he had not tried to determine the basis for the adverse credit-report entries. (Tr. 115.)

SOR ¶¶ 1.t and 1.u: telecommunication bills placed for collection of \$942 and \$366. In Applicant's answer, he stated that these are fraudulent debts. They are reflected in the September 2016 credit report. The first was for cellphone service and was placed for collection in September 2014. The second appears to be for other telecommunications services, and it was placed for collection in September 2016. (GX 12 at 8-9.) At the hearing, Applicant testified that he contacted the creditor. (Tr. 114-15.) He submitted no documentation showing that he had contacted the creditor or that the debts were being resolved.

Applicant's disability pay is \$456 per month. His weekly gross pay as a contractor employee is \$1,362.40. His weekly net pay after taxes and the garnishment is \$790.97. (AX A.) He pays \$800 per month to his wife for "rent," \$89 per month for Internet service, \$300 every two weeks for groceries, \$100 per month for video games, and \$80 per month for cigarettes. He does not have a savings account. He has about \$2,000 in his checking account. He intends to start a 401(k) retirement account. (Tr. 126-28.) He testified that he does not know his wife's annual salary, but it is more than he earns. (Tr. 90.) His wife testified that they shared finances briefly after they were married, but she now takes care of most of their living expenses. She was not asked and did not disclose her annual salary. At the time of her testimony, she was not aware of Applicant's financial problems that are alleged in the SOR. (Tr. 47-50.)

Guidelines G, Alcohol Consumption and J, Criminal Conduct

The SOR alleges three incidents of driving while intoxicated under Guideline G and cross-alleges the same incidents under Guideline J.

Applicant testified that his father, grandfather, and grandmother all suffered from alcohol addiction. He first used alcohol at age 14. He started binge drinking every two weeks at age 19. (AC C at 238.) He began drinking regularly in 2013, after he lost his job. Before 2013, he drank socially but infrequently. (Tr. 60.)

Applicant was charged with DWI on February 2005. In his answer to the SOR, he denied being charged or convicted. He stated that he was sitting in his mother's parked car and talking on the phone when the police searched the car and found his mother's prescription drugs in the glove box and charged him with possession of a controlled substance. He claimed that the charges were "thrown out" because there was no evidence that he was intoxicated or was driving. However, the court records reflect that his mother posted a \$500 bond, he was arraigned in March 2005, and he pleaded guilty to DWI. (GX 15.) This conviction is alleged in SOR ¶ 2.c.

Applicant was charged with DWI in April 2016 and convicted in September 2016. This conviction is alleged in SOR ¶ 2.a. He testified that had been working late at night, around 10:00 p.m., and he stopped at a parking lot to have a telephone conversation with his wife that became tense. He testified that after the conversation ended, he went to a nearby bar and had two or three drinks. (Tr. 117-19.) He was stopped as he was driving home at about 1:00 a.m. He pleaded guilty and was sentenced to 30 days in jail, suspended, fined \$250, assessed court costs of \$216, and placed on unsupervised probation for two years. His driver's license was restricted and he was required to install an ignition interlock. (GX 13.)

Applicant was again charged with DWI in September 2016 and convicted in February 2017. His blood-alcohol content (BAC) was more than .15. He pleaded guilty and was sentenced to 365 days in jail, with 305 days suspended, a fine of \$1,000, court costs of \$236, and unsupervised probation for 36 months. (GX 14.) This conviction is alleged in SOR ¶ 2.b.

After Applicant's arrest for DWI in April 2016, he was required by the court to complete a 12-week substance abuse program. (Tr. 66.) After his DWI arrest in September 2016, he was jailed, and the court informed him that he would not be released on bond unless he was enrolled in a substance-abuse program.

On October 24, 2016, Applicant was admitted into a residential substance-abuse program administered by the Department of Veterans Affairs (VA). On admission, he was diagnosed with an alcohol-abuse disorder, generalized anxiety disorder, and chronic low back pain. (AX C at 272.) During his intake, he disclosed that for the past year he had been drinking between a pint and a fifth of rum or brandy daily. (AC C at 61.) His diagnosis was later changed to alcohol dependence. (AX C at 1.) He was required to live at the VA facility and could not leave without a pass. He received individual and group counseling, was tested regularly for alcohol use, and was required to attend Alcoholics Anonymous (AA) meetings. He was allowed to leave the facility to seek employment. The facility records reflect that he was cooperative, attentive, and compliant. He was discharged on February 3, 2017, and immediately began working for his current employer. (AX C at 55.)

Applicant testified that he abstained from alcohol until September 2020. The evidence indicates that Applicant resumed drinking earlier than September 2020, probably in July or August. He testified that he resumed drinking, thinking that one drink would not be a problem, drank again two weeks later, drank a third time a couple days later, and then realized he had a problem. (Tr. 66-67.) On August 31, 2020, he notified his attorney that he had self-admitted into a medical facility and would be there for an undetermined period. His attorney requested that the hearing scheduled for September 3, 2020, be postponed. Applicant submitted no documentation of the dates of this period of rehabilitation, but his testimony is corroborated by his attorney's correspondence about postponing the hearing and his attorney's multiple updates about his projected completion dates for the rehabilitation program. The correspondence about the postponement and rescheduling of the hearing is attached to the record as Hearing Exhibit I.

Applicant submitted no evidence about the content of this recent rehabilitation program. He submitted no evidence of a diagnosis or prognosis by a medical professional associated with the program. He testified that he has abstained from alcohol and attended AA meetings every other day since his completion of the rehabilitation program in October 2020. (Tr. 70.) He provided no documentation of his AA participation.

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 F, Financial Considerations

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

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

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 and the evidence submitted at the hearing establish the following disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the ability to do so; and

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

The following mitigating conditions are potentially relevant:

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(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.

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not established. Applicant's periods of unemployment and temporary marital separation were conditions beyond his control that adversely affected his finances.

However, he has not acted responsibly. He has been employed since February 2017, but he has taken virtually no action to resolve his debts.

AG ¶ 20(c) is not established. Applicant briefly employed a debt-resolution company to challenge some of the debts reflected in his credit reports, but a debt-resolution company does not provide the type of financial counseling contemplated by this mitigating condition, and there are no clear indications that Applicant's financial problems are under control.

AG ¶ 20(d) is not established. Applicant has relied on garnishment to resolve the debt in SOR ¶ 1.a and diversion of tax refunds to pay the delinquent fines and court costs arising from his DWI conviction in September 2016, but involuntary garnishment and diversion of tax refunds are not good-faith efforts within the meaning of this mitigating condition. ISCR Case No. 09-05700 (App. Bd. Feb. 24, 2011), citing ISCR Case No. 08-06058 (App. Bd. Sep. 21, 2009). He submitted no evidence of payments or payment agreements for any of the debts alleged in the SOR, except for the debts alleged in SOR ¶¶ 1.q and 1.r. He submitted evidence that he had contacted these two creditors on February 1, 2021, after the hearing, about possible payment agreements, and he had made one payment on the debt alleged in SOR ¶ 1.r. However, an applicant who waits until his clearance is in jeopardy before resolving debts may be lacking in the judgment expected of those with access to classified information. ISCR Case No. 16-01211 (App. Bd. May 30, 2018) *citing* ISCR Case No. 15-03208 at 5 (App. Bd. Mar. 7, 2017). The inconsistencies between Applicant's answer to the SOR and his testimony at the hearing reflect that he does not have a good grasp of his financial situation and does not have a realistic plan to resolve his delinquent debts.

AG ¶ 20(e) is not established. Applicant denied several debts in his answer to the SOR and claimed that they were fraudulent, but he provided no documentary evidence of fraud, no evidence that he disputed the debts with the collection agencies, original creditors, or the credit bureaus, and no evidence that any disputed debts were resolved in his favor.

Guideline G, Alcohol Consumption

The concern under this guideline is set out in AG ¶ 21: "Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness."

The SOR alleges three incidents involving driving while intoxicated. Applicant's relapse in August 2020 and his subsequent treatment are not alleged in the SOR and may not be an independent basis for denying a clearance. However, conduct not alleged in the SOR may be considered to assess an applicant's credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case

No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). I have considered Applicant's recent relapse and treatment for these limited purposes.

The following disqualifying conditions are established by Applicant's admissions and the evidence submitted at the hearing:

AG ¶ 22(a): alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder;

AG ¶ 22(c): habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder;

AG ¶ 22(d): diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder;

AG ¶ 22(e): the failure to follow treatment advice once diagnosed; and

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

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.

AG ¶ 23(a) is established for the DWI charge in 2005, alleged in SOR ¶ 2.c. It occurred 15 years ago, before he enlisted in the Navy. Ten years elapsed before the next alcohol-related incident. This incident is mitigated by the passage of time.

AG ¶ 23(a) is not established for the DWI charges alleged in SOR ¶¶ 2.a and 2.b. Applicant's alcohol-related conduct during 2016 was frequent and did not occur under circumstances making recurrence unlikely. Although the DWI was almost four years ago, it was "recent." There are no "bright line" rules for determining when conduct is "recent." The determination must be based on a careful evaluation of the totality of the evidence. If the evidence shows "a significant period of time has passed without any evidence of misconduct," then an administrative judge must determine whether that period of time demonstrates "changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation." ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). The time between Applicant's conviction of DWI in February 2017 and his relapse in August 2020 is a "significant period of time," However, Applicant was on probation until February 2020, and he resumed his alcohol consumption shortly after his probation ended, probably in July or August 2020. I conclude that the DWI arrest in September 2016 is "recent" within the meaning of this mitigating condition.

AG ¶¶ 23(b) and 23(d) are not fully established. Applicant has acknowledged his maladaptive alcohol use and he has taken actions to overcome his problem. He has completed two treatment programs. However, insufficient time has passed to demonstrate a clear and established pattern of abstinence.

Guideline J, Criminal Conduct

The SOR cross-alleges Applicant's alcohol related conduct under this guideline. The concern under this guideline is set out in AG ¶ 30: "Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations."

The evidence establishes the following disqualifying conditions under this guideline:

AG ¶ 31(a): a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

AG ¶ 31(b): evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

The following mitigating conditions are potentially applicable:

AG ¶ 32(a): so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

AG ¶ 32(d): there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

AG ¶ 32(a) is established for the incident alleged in SOR 2.c, which is mitigated by the passage of time. Neither mitigating condition is established for the incidents alleged in SOR ¶¶ 2.a and 2.b, for the reasons set out in the above discussion of Guideline G.

Whole-Person Concept

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. An 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.

I have incorporated my comments under Guidelines F, G, and J in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). I have considered Applicant's military service and service-connected disabilities. I have considered that he voluntarily undertook his most recent treatment for alcohol dependence. He appeared sincere at the hearing. However, his lack of financial responsibility and the recency of his alcoholic relapse outweigh the mitigating evidence. After weighing the disqualifying and mitigating conditions under Guidelines F, G, and J, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his financial delinquencies, alcohol consumption, and criminal conduct.

During closing statements at the hearing, Applicant's attorney suggested the possibility of a conditional security clearance. Appendix C of SEAD 4 provides that a conditional clearance may be granted "despite the presence of issue information that can be partially but not completely mitigated, with the provision that additional security measures shall be required to mitigate the issue" Based on the evidence, I have concluded that Applicant is not a good candidate for a conditional clearance. He provided minimal evidence mitigating the financial concerns. Despite completing an extensive

rehabilitation program in February 2017, he relapsed just before his hearing. He provided minimal evidence regarding the content of his most recent treatment, and no evidence of an updated diagnosis or prognosis.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a-1.m and 1.o-1.u: **Against Applicant**

Subparagraph 1.n: **For Applicant**

Paragraph 2, Guideline G (Alcohol Consumption): **AGAINST APPLICANT**

Subparagraphs 2.a and 2.b: **Against Applicant**

Subparagraph 2.c: **For Applicant**

Paragraph 3, Guideline J (Criminal Conduct): **AGAINST APPLICANT**

Subparagraph 3.a: **Against Applicant**

Conclusion

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

LeRoy F. Foreman
Administrative Judge