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

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| In the matter of: | ) | |
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| REDACTED | ) | ISCR Case No. 20-02369 |
| | ) | |
| Applicant for Security Clearance | ) | |

## Appearances

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

09/16/2022

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## Decision

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant committed drunk-driving offenses in July 2013, April 2014, and August 2015. He completed treatment programs between November 2015 and April 2016 and again from December 2019 to January 2020, for diagnosed severe alcohol abuse disorder, and been abstinent from alcohol since December 5, 2019. He used cocaine between March 2014 and November 2015 in disregard of his security clearance obligations. He defaulted on several debts. He does not intend to drink alcohol or use illegal drugs in the future, but he has yet to fully mitigate the concerns for his judgment, reliability, and trustworthiness in several aspects. Clearance eligibility is denied.

## Statement of the Case

On May 21, 2021, the Defense Counterintelligence and Security Agency (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline G, alcohol consumption; Guideline J, criminal conduct; Guideline H, drug involvement and substance misuse; Guideline E, personal conduct; and Guideline F, financial considerations. The SOR explained why the DCSA CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DCSA CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended;

Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective within the DOD on June 8, 2017.

On May 26, 2021, Applicant responded to the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On February 7, 2022, Department Counsel indicated that the Government was ready to proceed to a hearing. On February 24, 2022, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national security interests of the United States to grant or continue a security clearance for Applicant. I received the case file and assignment on March 1, 2022.

Applicant was unavailable for a hearing proposed for June 6, 2022, because of a business commitment that week. After some coordination with the parties, on June 28, 2022, I scheduled a video teleconference hearing for July 19, 2022. At the hearing convened as scheduled, six Government exhibits (GE 1 through 6) and two Applicant exhibits (AE A and B) were admitted into the record without any objections. A February 3, 2022 letter from Department Counsel forwarding copies of the proposed GEs to Applicant, was provided but not marked for the record as Applicant confirmed that he received the exhibits. Applicant testified, as reflected in a hearing transcript (Tr.) received on July 28, 2022.

I held the record open for three weeks after the hearing to allow Applicant the opportunity to submit additional exhibits. On July 19, 2022, Applicant submitted by email his entire treatment record from the Department of Veterans Affairs (VA). Given that a significant portion of the records was duplicative of AE B, I asked him to submit only the relevant medical records not already in evidence. On August 6, 2022, Applicant submitted VA records focused on the period from 2015 and 2016. The document was admitted as AE C without any objections. The record closed on August 8, 2022.

## Findings of Fact

The SOR alleges under Guideline G (SOR ¶ 1), and cross-alleges under Guideline J (SOR ¶ 2.a) and Guideline E (SOR ¶ 4.b) that Applicant was convicted of driving under the influence (DUI) or operating under the influence (OUI) offenses committed in July 2013 (SOR ¶ 1.b), April 2014 (SOR ¶ 1.c), and August 2015 (SOR ¶ 1.d). Also under Guideline G, Applicant allegedly consumed alcohol at times to excess and to intoxication since about 2013 to at least December 2019 (SOR ¶ 1.a); was separated from the Army National Guard Reserve (ARNG) because of his alcohol-related offenses; and received treatment from November 2015 to January 2016 for diagnosed addictive disorder-alcohol abuse and attention deficit disorder (SOR ¶ 1.f) and from February 2016 to April 2016 for substance abuse and post-traumatic stress disorder (PTSD) (SOR ¶ 1.g).

The SOR alleges under Guideline H (SOR ¶ 3.a), and cross-alleges under Guideline J (SOR ¶ 2.b), that Applicant used cocaine with varying frequency from about September 2013 to at least September 2015 while granted access to classified information (SOR ¶ 3.b). His use of cocaine while granted access to classified information was also cross-alleged under Guideline E (SOR ¶ 4.a). Also under Guideline E, Applicant allegedly falsified his June 30, 2018 Electronic Questionnaires for Investigations Processing (hereafter SF 86) by responding negatively to inquiries concerning any delinquency regarding routine accounts (SOR ¶ 4.c). Under Guideline F, the SOR alleges that Applicant owed, as of May 21, 2021, three charged-off debts for $24,833 (SOR ¶ 5.a), $830 (SOR ¶ 5.b), and $53 (SOR ¶ 5.i); and eight collection debts for $185 (SOR ¶ 5.c), $572 (SOR ¶ 5.d), $1,493 (SOR ¶ 5.e), $619 (SOR ¶ 5.f), $1,188 (SOR ¶ 5.g), $567 (SOR ¶ 5.h), $3,923 (SOR ¶ 5.j), and $469 (SOR ¶ 5.k).

When Applicant answered the SOR, he admitted all of the allegations but indicated that he did not intentionally falsify his SF 86. Applicant asserted that he had abstained from alcohol since December 5, 2019; that he sought help for his depression and is on mental-health medications; and that he had paid off some of the delinquent debts, including the debt in SOR ¶ 5.a.

Applicant's admissions to abusing alcohol and committing drunk-driving offenses; to receiving treatment for the diagnosed conditions; and to having owed the delinquent debts are accepted and incorporated as findings of fact. After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact.

Applicant is a 35-year-old high school graduate with some online college study. (GE 1.) He has never married, but he has had a cohabitant girlfriend for the past five years. She has two children, ages 17 and 20, who live with them. (Tr. 29, 32, 81.) Applicant has worked for his current employer, a defense contractor, since about June 2017. (GE 1.)

Applicant enlisted in the ARNG at age 17 in April 2004 (Tr. 32-33), and he served until February 2016, when he was granted a general discharge under honorable conditions because he had tested positive for cocaine and alcohol in a routine ARNG screening. (Tr. 35.) He appealed the character of his discharge, and it was later changed to honorable based on his military service record. (GE 2; AE B; Tr. 35-36.) He was activated twice to combat duty: from May 2006 through April 2007 and from July 2008 to May 2009. (AE B; Tr. 33.) He was granted a security clearance shortly before his second deployment. (Tr. 34.) On his return from active duty, he worked full time for his state's ARNG, which included a deployment overseas from October 2012 to August 2013. (AE C.) In September 2013, he lost his full-time job with the ARNG. He indicated on his June 2018 SF 86 that funding for his full-time position with the ARNG ran out, but his medical records from the VA indicate that his job loss was because of his July 2013 DUI. (AE C.)

## Substance Use and Treatment

Applicant drank alcohol in high school "at a party here or there." (Tr. 36.) His drinking to excess started in the summer of 2007. After he returned from being deployed, he initially consumed alcohol in quantity of 30 beers and 750 ml of liquor per week. (AE C.) He eventually moderated his consumption to social drinking, about twice a week, until about April 2013. After he and his then-fiancée called off their relationship three months before they were to marry (Tr. 37), he began to turn to alcohol, often nightly, to self-medicate for mental-health issues. (AE C; Tr. 25.)

After drinking four to five alcohol drinks while out at a casino with family members one evening in July 2013, Applicant was stopped by police for swerving. He failed field sobriety tests and was arrested for DUI. He pled guilty, was granted accelerated rehabilitation, placed on probation, and ordered to complete 100 hours of community service and alcohol counseling. The charge was dismissed after he completed the terms. (GE 2.)

Applicant's July 2013 DUI was a factor in him losing his full-time job with the ARNG around September 2013. He drank 750 ml of vodka per night early that winter before his family intervened in January 2014, and he attended a two-week alcohol program. (AE C.) From March 2014 to November 2014, he worked as a part-time bartender. (GEs 1, 2.) He drank alcohol at times to excess and used cocaine intermittently in combination with alcohol in that job. (Tr. 26, 44.) He used cocaine as the drug helped him sober up more quickly from drinking. He found that the drug helped him drink more. (Tr. 42.)

Applicant consumed five to six alcohol drinks and three to four shots of liquor on April 18, 2014, while talking with patrons and then cleaning up with his manager after closing the bar. While driving home, he was stopped by the police, who smelled alcohol on his breath. He failed a breathalyzer and was arrested for DUI. (GEs 1-2.) Available records from the Federal Bureau of Investigation (FBI) indicate a re-arrest date of October 25, 2014; a disposition date of January 14, 2015; and a sentence of six months in jail, suspended, a $500 fine, one year of probation, and 100 hours of community service. (GE 6.)

Applicant was seen at a VA health center in May 2014 and referred to the facility's substance-abuse clinic. He reported an escalation of alcohol use following two deployments and use of alcohol to avoid his mental-health problems. A toxicology screen of May 8, 2014 was positive for cocaine. While attending substance-abuse outpatient programs at the VA between July 2014 and September 2014, he continued to drink alcohol once a week, about two to four drinks each time. His drinking adversely affected his relationship with his family between April 2014 and February 2015. (AE C.)

Applicant was unemployed from about November 2014 to June 2015. He was not engaged in any substance-abuse treatment nor seeing a psychiatrist during that time. (GE 1; AE C; Tr. 25.) On March 6, 2015, he presented at a VA clinic for a medical screening for a research study. He showed signs of mild intoxication, and he reported a

history of consuming two to three alcohol drinks per day. He described his drinking as "out of control" in the recent past. He was advised to abstain from alcohol. (AE B.)

Applicant worked for a home-improvement retailer from April 2015 to August 2015. He told the VA in 2015 that he had been sober, but he subsequently admitted in May 2016 that he had been drinking the entire time. (AE C.) In August 2015, he started working as a manager at a bar. (GE 1.) In addition to using alcohol, he used cocaine on occasion to at least November 22, 2015. (GE 2; AE C.) He reported during a psychiatric consult at the VA in May 2016 that he had "hired his cocaine dealer" when he managed the bar so that he and his staff would have access to the drug "as needed." At times, he slept on a sofa at work and was late to his drill weekend because of drinking. (AE C.)

On August 31, 2015, Applicant crashed his scooter in route home after consuming five to six alcohol drinks with a friend on the friend's boat. He was charged with DUI and with probation violation (two counts). (GE 6.) He testified that he was charged with being a two-time first offender for the April 2014 and August 2015 DUIs in that he faced one DUI charge for the August 2015 offense with the ramifications of two DUIs. (Tr. 38.) FBI records show that, on April 27, 2016, he was convicted of the August 2015 DUI and of the violation of probation charges. On May 4, 2016, he was sentenced on the DUI charge to six months in jail, one year of probation, and a $500 fine. He had to serve only ten days in jail as the court accepted his attendance at a substance-abuse treatment program in lieu of jail time. He was sentenced on the probation violation counts to two days in jail for each offense, to serve concurrently. (GE 6; AE C.) He was also required to have an interlock-type device in his vehicle. (GE 2; Tr. 28.) He testified that he fulfilled the terms of his sentence, and the device was removed. (Tr. 78.)

On September 17, 2015, Applicant went to a VA mental-health clinic seeking substance-abuse treatment. He reported some anxiety and exhibited some signs of minimization of the harm drinking had caused him. He reported drinking "only six drinks" before his August 2015 DUI. He was placed on a trial dose of Lexapro and referred to an outpatient alcohol and substance abuse program. (AE C.)

During a follow-up visit with his treating psychiatrist at his local VA clinic on October 19, 2015, Applicant reported he had completed seven sessions of substance-abuse treatment and had abstained from alcohol. He was diagnosed with alcohol use disorder and PTSD (rule out), and was continued on Lexapro. (AE C.)

Applicant quit working at the bar in November 2015 to focus on his alcohol rehabilitation. (GE 1.) On November 23, 2015, he went to a VA medical center's psychiatric emergency department accompanied by his ARNG supervisor. Applicant had been late to a military drill because of intoxication, after having consumed a gallon of alcohol. He reported binge drinking of six to eight beers plus 750 ml of vodka or rum every three weeks and consumption of lesser amounts several times per week, to as recently as November 20, 2015. He complained of symptoms of PTSD and requested substance-abuse treatment. He was admitted for observation for 23 hours, and was diagnosed with alcohol use disorder (binge pattern) and PTSD. Assessed as psychiatrically stable, he

was discharged on November 24, 2015, for immediate admission to a private inpatient alcohol-treatment facility for alcohol detoxification. The records from that private treatment facility were not submitted in evidence, but the VA records show that he was discharged from the inpatient facility on December 1, 2015. (AE C.)

While residing in a sober-housing situation, Applicant received follow-up recovery-support treatment in a VA intensive outpatient program (IOP) from December 2, 2015, to December 23, 2015, for diagnosed alcohol use disorder (severe) and PTSD. In reviewing his options for follow-up care with his recovery support team on December 17, 2015, Applicant expressed a desire to continue individual therapy to address his negative life experiences, as his felt his alcohol and drug use stemmed from "defective ability to cope." He did not believe group substance-abuse treatment would be helpful to him, although medical records show that he had demonstrated active listening skills in group sessions. He was discharged on December 23, 2015, to follow-up with counseling until a dual-diagnosis program became available, and to continue with his VA psychiatrist. At discharge, Applicant indicated that he was "considerably" confident in his ability to abstain from alcohol and drugs. He denied any cravings to use alcohol or drugs in the prior 30 days. (AE C.)

During a session with his VA psychiatrist on January 12, 2016, Applicant reported that he had abstained from alcohol for 50 days with no cravings. On January 26, 2016, he was determined to be not a good candidate for a certain dual-diagnosis program because his medical record did not adequately support the PTSD diagnosis. He was accepted into another program through the VA to start on May 26, 2016, or earlier, if a slot became available. (AE C.)

Applicant agreed to participate in a once-weekly continuing care program at the VA, but he never started the program. He told the VA he was on active-duty orders through February 23, 2016, and was unable to attend. In lieu of that program, he attended individual therapy outside the VA setting. His therapist advised the VA that, after six weeks of therapy, she considered Applicant to be in the "pre-contemplative stage" regarding his drinking and in some denial. VA records show that Applicant consumed alcohol on at least February 14, 2016. (AE C.)

On March 4, 2016, Applicant was admitted to a six-week specialized inpatient dual-diagnosis program at a VA facility for diagnosed alcohol dependence and PTSD. A breathalyzer test on admission was negative for any alcohol. Applicant interacted well with peers and staff and attended all groups and classes with good participation. Clinical opinion was positive for Applicant's development of goals toward an overall improvement in his lifestyle and his challenges. He was discharged as scheduled on April 15, 2016, with a plan to continue cognitive behavioral therapy with his private therapist. During a psychiatric visit at the VA on April 19, 2016, Applicant reported that he had maintained sobriety. (AE C.)

On May 16, 2016, Applicant was assessed at the VA to see if an increase in his service-connected disability was warranted due to his mental-health issues. He reported

no alcohol consumption since February 14, 2016, and was diagnosed, in part, with PTSD and alcohol use disorder, severe, in early remission. (AE C.)

Applicant became employed as a clerk at a gas station in June 2016. He was fired in March 2017 for a violation of his employer's policies unrelated to drinking. (GEs 1-2.) Applicant then held a part-time job in maintenance for a daycare facility until he started his current employment in June 2017. (GE 1.) He denies any drinking around that time, but admits that he did not take his recovery as seriously as he should have. (Tr. 26.-27.) After not drinking for approximately 18 months (AE C), he began drinking socially, "a drink now and then at dinner," in the summer of 2017. (Tr. 47.) Applicant thought he could control his drinking. (Tr. 50.)

On his June 2018 SF 86, Applicant disclosed that he received treatment for PTSD for about two months in 2016. He listed his three DUIs and one violation of probation offense. Concerning an SF 86 inquiry into whether his use of alcohol had any negative impact on his work performance, professional or personal relationships, his finances, or resulted in law enforcement intervention, Applicant indicated that, in addition to the DUIs, alcohol caused him problems between September 2013 and September 2015 in that his relationships with family and friends suffered. He disclosed that he had participated in alcohol-rehabilitation programs at the VA between November 2015 and January 2016. (GE 1.)

In response to an SF 86 illegal drug inquiry, he reported that he used cocaine infrequently and only when drinking between September 2013 and September 2016. He responded affirmatively to an SF 86 inquiry into whether his drug use occurred when he possessed a security clearance. He explained that he self-medicated with alcohol and sometimes cocaine when he was in a "rough place" in his life, but that he had checked himself into rehabilitation, was taking medications to control his PTSD, and going to support groups for his PTSD. He added that he had ended all ties to people who use illegal drugs and drink heavily, and he denied any intention of returning to that lifestyle. (GE 1.)

On August 10, 2018, Applicant had a personal subject interview (PSI) with an authorized investigator for the Office of Personnel Management (OPM). He related that he was drinking alcohol, despite previous treatment for alcohol use. He described his current consumption as one or two drinks per month at family functions, usually celebrations, which he did not consider to be abusive. He stated that he would "never" again consume alcohol to the point where it impacted him negatively. (GE 2.)

As for his cocaine use, Applicant recalled during his PSI that he last used cocaine around September 2015 and not September 2016. He stated that he used cocaine about five times, in bar settings, while he held a security clearance. He denied any intention to use cocaine in the future because of his "current career" and stated that he had no ongoing association with individuals who use the drug. (GE 2.) Applicant now asserts that his cocaine use occurred between September 2014 and September 2015, when a positive drug screen for cocaine led to his discharge from the ARNG in February 2016.

(Tr. 41.) VA records show he tested positive for cocaine on May 18, 2014, and again on November 22, 2015. (AE C.) He now recalls that he first used cocaine on his birthday in March 2014 and last used cocaine before he entered the dual-diagnosis program, which VA records show started on March 4, 2016. (AE C; Tr. 44) He told the clinicians in the dual-diagnosis program that he last used cocaine on November 22, 2015. The evidence substantiates that he used cocaine on occasion between March 2014 and at least November 2015 rather than from September 2013 to September 2015 as reported on his SF 86, or from September 2014 to September 2015 as stated during his PSI.

Applicant's drinking eventually progressed to every other day after work. He testified at his hearing that it was not that he lacked control over his drinking at that time, but he "thought it was on that path." (Tr. 47-49.) On December 5, 2019, Applicant contacted his VA psychiatrist and reported that "the drinking started back up" and that his mental-health medications were ineffective. He had not been taking his psychiatric medications. (AE B.)

On December 10, 2019, Applicant voluntarily sought treatment in the psychiatric emergency room at the VA for his alcohol use disorder. He felt that he could not stop drinking on his own and could not safely undergo detoxification at home. (Tr. 49-50.) He was admitted overnight for observation prior to entering a substance-abuse day program. A drug screen of December 10, 2019, detected no presence of illegal drugs. He reported a last use of cocaine some four years prior, but recent use of alcohol to a last use on December 5, 2019. He described his drinking as "getting out of hand." He used alcohol to address issues of insomnia and anxiety, and reported consuming two bottles of vodka every two to three days preceding his last use. He was discharged to a recovery-support program on December 11, 2019, with a diagnosis of alcohol use disorder. He was not accepted for admission to a higher level of residential treatment as clinical opinion was that his needs could be met at the lower level of care. (AE B.)

Applicant attended a recovery-support program, which included group day sessions starting December 12, 2019, in the same substance-abuse rehabilitation program he had attended in 2015. He was diagnosed with alcohol dependence, uncomplicated. His family and friends were supportive of his recovery, and he felt extremely confident throughout treatment that he would not use alcohol or illegal drugs. Initially, he reported that he was slightly bothered by cravings or urges to use alcohol. He attended and participated in all aspects of the program, including group sessions of December 17, 2019, in which the importance of medication compliance was stressed, and December 30. 2019, in which attending self-help meetings after discharge was encouraged. He remained abstinent from alcohol and illegal drugs, as confirmed by negative urine screens and breathalyzer tests. Clinicians assessed him as able to identify and discuss triggers and urges, and having developed good coping skills to avoid relapse. Applicant requested to follow up the program in an evening IOP outside the VA network. At discharge to his home on January 6, 2020, he was referred to a community resource for assistance with securing an IOP. He also planned to see his private therapist and his psychiatrist at the local VA primary-care clinic. (AE B.)

During a January 7, 2020 session with his VA psychiatrist, Applicant reported that he had become complacent with social alcohol use and so took action to stop using alcohol. He expressed his intention to pursue an evening IOP and denied any current cravings or urges to use alcohol. Concerning his mental-health medications, he admitted that he had discontinued taking his Depakote on his own. He was continued on Adderall and cleared to return to work. (AE B.)

Applicant testified that he attended an IOP three nights per week for two months. (Tr. 27, 51.) Records of that program are not in evidence. In response to interrogatories, on January 21, 2021, Applicant stated that his alcohol and drug use was "more of an escape from underlying PTSD issue." He indicated that he was "seeking counseling for mental health due to PTSD still." (GE 2.)

On July 27, 2020, Applicant was diagnosed by the VA with adult attention deficit hyperactivity disorder (ADHD). He currently takes bupropion for a mood disorder diagnosed in February 2021 and Ritalin for his ADHD. (AEs B-C; Tr. 79.) He is currently on a maintenance schedule where he sees his VA-appointed psychiatrist every two or three months. He is not currently receiving therapy from a therapist. He last saw the private therapist in Spring 2021, and he has been looking for a new therapist without success. (Tr. 51, 84.) He has requested an appointment with his VA psychiatrist because of increased depression over the last month. (Tr. 80.) Notwithstanding his history of drinking to self-medicate mental-health issues, he does not believe he is at risk of relapsing into alcohol. (Tr. 80.)

Applicant is not involved in any self-help meetings such as Alcoholics Anonymous (AA), but he has participated about once a week in an online program Smart Recovery, which he states instructs on "more modern coping skills and techniques." (Tr. 52-53.) He signed onto Smart Recovery in January 2020. (Tr. 53.) He denies any consumption of alcohol since December 5, 2019, and any intention to drink alcohol in the future. (Tr. 27-28.) His girlfriend and family are his primary support system. (Tr. 53.) He testified that his job is also a significant deterrent to relapse. (Tr. 81.)

**Finances**

Applicant's finances began to suffer around 2014 and 2015, when he was drinking heavily. He testified that all of his money went to fight cancer. (Tr. 54.) Available VA records do not show a cancer diagnosis (AEs B-C), and he presented no evidence of medical payments. Periods of unemployment were a factor in him being unable to meet some of his expenses. (Tr. 54.)

Applicant responded affirmatively on his June 2018 SF 86 to inquiries into any delinquency involving enforcement. He listed one debt of $20,000, for which his pay was garnished. At the time, he believed it was a credit-card debt, but he recalled during his August 2018 PSI that it was a car-loan deficiency balance. (GE 2.) About steps to satisfy the debt, he indicated on his SF 86, "I had no clue about it. . . talking with lawyer to get it resolved sooner." He answered "No" to the SF 86 questions about any delinquency

involving routine accounts, but added, "Besides previously stated not that I can remember." (GE 1.)

As of July 14, 2018, Applicant's credit report (GE 5) showed the delinquent accounts listed in SOR ¶¶ 5.a.-5.j. As of April 9, 2020 (GE 4), his credit report showed an additional delinquency (SOR ¶ 5.k). The delinquency and payment histories for the accounts are reflected in the following table:

| SOR debt | Delinquency history | Payment history |
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| 5.a. $24,833 charged off on auto loan | Auto loan for about $30,000 (GE 2) obtained Feb. 2012; had car accident when insurance had lapsed (Tr. 57); $24,833 charged-off balance as of June 2018. (GE 5.) | Asserts debt resolved through garnishment of his pay from 2018 to 2021 (Tr. 56-58); debt not on credit reports from Apr. 2020 (GE 4), Feb. 2022 (GE 3), or July 2022 (AE A); no proof of garnishment or other payments in evidence. |
| 5.b. $830 written off by credit union | Account opened May 2009; last activity Feb. 2012; $830 written-off balance as of July 2017. (GE 5.) | Admits debt not paid; asserts debt was incurred by his ex-fiancée. (Tr. 58.) |
| 5.c. $185 utility debt in collection | Account for utility service opened Dec. 2015; $185 for collection June 2018. (GE 5.) | Claims "just paid" (Tr. 59); no proof but not on recent credit reports. |
| 5.d. $572 utility debt in collection | Account for electricity service opened June 2016; $572 for collection June 2018. (GE 5.) | Believes it has been paid because he currently has account in his name (Tr. 60); no proof of payment but not on recent credit reports. |
| 5.e. $1,493 [sic] insurance debt in collection | Insurance debt from Nov. 2017 in collection for $493 as of July 2018 (GE 5); $493 in collection as of July 2022. (AE A.) | Claims all debts with insurance company have been paid (Tr. 60); Feb. 2022 paid $172 collection balance for insurance (not alleged) but $493 debt reported as unpaid as of July 2022 (AE A); disputes it is still owed. (Tr. 77.) |
| 5.f. $619 utility debt in collection | Account for electricity service inactive since Nov. 2017; $619 for collection Mar. 2018 (GE4); unpaid as of Mar. 2020. (GE 5) | Believes it has been paid because he currently has account in his name (Tr. 61); no proof of payment |

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| | | but not on recent credit reports. |
| 5.g. $1,288 wireless phone debt in collection | Wireless phone account opened Aug. 2017; $1,188 collection balance as of July 2018. (GE 5.) | Debt not on credit report he obtained from Credit Karma so did not think he had to address it. (Tr. 62-63.) |
| 5.h. $567 satellite television debt in collection | Satellite television account opened Jan. 2017; $567 collection balance as of July 2018. (GE 5.) | No efforts to repay it. (Tr. 64.) |
| 5.i. $53 in collection | Credit-card account opened Aug. 2016; last activity Dec. 2016; $53 charged off June 2017; $53 past-due balance as of June 2022. (GEs 3-5; AE A.) | Asserts he is "pretty sure" he paid that debt (Tr. 65), but provided no proof and debt still on credit report as of July 2022. (AE A.) |
| 5.j. $3,923 military aid debt in collection | Account opened Dec. 2013; $3,923 collection balance as of July 2018. (GE 5.) | Mistakenly assumed debt was credit card that was paid off as of May 2012 (GE 5; Tr. 66); no efforts to repay it as of June 2022. (Tr. 66.) |
| 5.k. $469 credit-card debt in collection | Credit-card account opened Mar. 2019; last activity Aug. 2019; $469 charged-off balance as of Mar. 2020. (GE 4.) | Asserts it has been paid off (Tr. 67); credit report shows an account opened in May 2021 brought current (AE A); no proof account opened in Mar. 2019 has been paid. |

During his August 2018 PSI, Applicant was confronted about the delinquencies on his credit report. About the previously disclosed garnishment, Applicant stated that his wages were being garnished at 24% if his pay since March 2018 to recover a $20,000 deficiency balance on a car loan that he thought insurance had covered. He indicated that he was unaware of any other delinquent accounts, and when confronted with the adverse credit information on his credit report, he was unable to provide any details. He expressed an intention to pay off his legitimate debts. He had not had any financial counseling, but stated that he intended to get some help to address his debts. (GE 2.)

Applicant asserts that when he found out about the adverse credit information on his credit record, he "tried to get one of those credit consolidators and figure it out that way, and then it kind of fell off. [He] got promoted at work and it wasn't important to [him], so [he] neglected it." (Tr. 55.) In his January 2021 response to DOHA interrogatories, Applicant stated, "1/2 of all debts paid and working with lawyer for rest." (GE 2.) He now admits that it was not until he received the SOR that he realized he could not put off

dealing with the debts any longer. (Tr. 55.) He maintains that he paid off some $30,000 in debt balances, including the car-loan debt in SOR ¶ 5.a, which was resolved through garnishment. (Tr. 56.) He provided no documentation proving that any of the SOR debts have been paid.

As of May 2022, Applicant was $387 past due on a $16,012 vehicle loan obtained in August 2017. His account first became past due 30 days in December 2017. It was 90 days past due in January 2019, December 2020, and January 2021. The loan had a balance of $8,364 as of late May 2022. (AE A.) He testified about the May 2022 delinquency that his car payment was not debited properly from his bank account so the bank rejected his payment. He paid $400 on July 4, 2022, to catch up. (Tr. 76.)

A credit-card account opened with a retailer in May 2021 was reported as being 120 days past due in February 2022, although it was current as of June 2022 with a $253 balance. A $22,122 vehicle loan cosigned by Applicant for his girlfriend in August 2017 had never been late. She made the $421 monthly payments on time and had reduced the balance to $6,303 as of May 2022. (AE A; Tr. 30.) As of July 2022, a $148 debt from February 2020 for his interlock device was in collection. (AE A.) He maintains that the debt has been paid. (Tr. 77.) As of July 2022, his credit rating was poor. (AE A.)

Applicant received a substantial increase in his salary from $68,000 to $104,000 annually on his promotion effective May 2, 2022, to a supervisory role at work. (Tr. 29, 67-68.) As of his July 2022 security clearance hearing, he was researching credit specialists to resolve some of his past-due debts. (Tr. 29.) He receives a monthly disability payment from the VA of $1,987. (Tr. 68.)

Applicant's cohabitant girlfriend is a paraprofessional in special education for a school district during the academic school year. (Tr. 29.) She did not finish out the 2021-2022 school year because of complications from COVID she suffered in early 2022. (Tr. 68.) When she was working, she earned $14.50 per hour for a 32-hour work week. (Tr. 82.)

Applicant and his girlfriend's monthly expenses include $2,000 for rent (Tr. 69); $377 and $421 in car payments (AE A); $100 for Internet service (Tr. 70); $89 for cellphone service (Tr. 71); and $600 to $700 for gasoline. (Tr. 71.) He and his girlfriend give her 20-year-old daughter about $200 a month for her college expenses. She is a commuter student at a community college. (Tr. 82.) Applicant was recently billed $1,200 for emergency room services. (Tr. 71.) He testified that he has around $2,000 per month available for food after paying his other obligations. (Tr. 72.) He indicated that he used some of his discretionary income to remove five collections debts from his credit report and to pay bills. (Tr. 72.) He has minimal savings of maybe "a couple" hundred, although he expects his financial situation to improve with his recent increase in income. (Tr. 73.) Applicant has not had any financial counseling, even though he testified he "definitely" needs it. (Tr. 74.)

## Policies

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

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

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

## Analysis

### Guideline G: Alcohol Consumption

The security concern about alcohol consumption is set forth in AG ¶ 21:

> Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

Applicant drank excessively after he returned from his first deployment in 2007. At some point not clear in the record, he limited his drinking to social settings about twice a week. After he and his then-fiancée ended their relationship around April 2013, he turned to alcohol to self-medicate for PTSD and other mental-health challenges. His first DUI in July 2013 had little impact on moderating his drinking, as by late 2013, he was consuming 750 ml of vodka nightly until his family intervened. He attended a two-week alcohol program in early 2014, but in March 2014, he started working at a bar. It led directly to his second DUI. He continued to drink alcohol on a weekly basis, about two to four drinks at a sitting, while attending outpatient programs at the VA during the summer of 2014. During a lengthy period of unemployment from November 2014 to June 2015, he was not engaged in any substance-abuse treatment nor seeing a psychiatrist for his mental-health issues. VA records show that in early March 2015, he reported that his drinking had recently been "out of control." In August 2015, he took a position as a bar manager/bartender, which exacerbated his drinking. He committed his third DUI shortly thereafter. Prior to the disposition of his April 2014 and August 2015 charges, he went to the VA in mid-September 2015, seeking substance-abuse treatment. At the time, he exhibited some denial of his alcohol problem. He reported that he had consumed "only six drinks" before his August 2015 DUI.

By mid-November 2015, Applicant had developed severe alcohol use disorder. After he reported for a military drill intoxicated, he went to the VA with his military superior on November 23, 2015, requesting substance-abuse treatment. Psychiatrically stable, he was discharged the following day for immediate admission to a private inpatient alcohol-rehabilitation facility. After a safe detoxification, he was discharged to an IOP at the VA where he then received treatment for diagnosed alcohol use disorder (severe) and PTSD. On his discharge from that program on December 23, 2015, he indicated that he was "considerably" confident in remaining abstinent. Yet, VA medical records reflect that he tested positive for alcohol on February 14, 2016.

Applicant fully participated in a dual-diagnosis program for PTSD and alcohol use disorder from March 4, 2016, through April 15, 2016. He maintained abstinence for some 18 months until the summer of 2017, when he began to drink socially. He became complacent about his alcohol problem, and his drinking progressed over time to every other day after work. After drinking two bottles of vodka in the days leading up to December 5, 2019, he turned to the VA for help arresting his drinking. He attended a recovery support program from December 12, 2019, to January 6, 2020. He indicates that he followed up in a two-month IOP. The records of that treatment are not in evidence, but I have no reason to doubt that he had the treatment. He denies any consumption of alcohol since December 5, 2019, and there is no evidence to the contrary. Even so, his history of excessive alcohol consumption establishes the following disqualifying conditions under 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;

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

(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; and

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

VA medical records reflect that Applicant's drinking was a factor in both the loss of his full-time employment with the ARNG and his early discharge from the ARNG. He showed up to a drill weekend in an intoxicated state around November 2015. 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") cannot be considered as a separate basis for disqualification because it was not alleged. It is properly considered as an episode of excessive drinking alleged under SOR ¶ 1.a, however.

Under ¶ E3.1.15 of the Directive, Applicant has the burden to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. The following mitigating conditions under AG ¶ 23 have some applicability:

(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

(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.

When Applicant sought substance-abuse treatment in November 2015, he was facing possible jail time for his DUIs and negative consequences for his ARNG career. The records of his inpatient detoxification at the private facility from November 24, 2015, to December 1, 2015, are not in evidence. VA records of his follow-up substance-abuse treatment show that he was an active participant in that program. Yet he failed to take his

alcohol problem seriously. Neither AG ¶ 23(b) nor AG ¶ 23(d) applies to his substance-abuse and dual-diagnosis treatment programs undertaken between November 24, 2015, and April 15, 2016, because of his extended relapse into drinking against clinical advice from the summer of 2017 to December 5, 2019. Applicant is credited under AG ¶¶ 23(b) and 23(d) with seeking help for his alcohol problem at the VA on December 10, 2019, and attending a recovery-support program from December 12, 2019, to January 6, 2020. In contrast to his previous rehabilitation efforts during the 2015 to 2016 timeframe when he tested positive for alcohol on February 14, 2016, he remained abstinent from alcohol and illegal drugs, as confirmed by testing during the recovery-support program. He fully committed himself to this treatment in that VA clinicians indicate that, by the time of his discharge, he was able to identify and discuss triggers, and had developed good coping skills to avoid relapse. As of his June 2022 security clearance hearing, he had been abstinent from alcohol for about 2½ years.

Applicant's diagnosis of alcohol use disorder, severe, is based on the criteria used by qualified medical professionals from the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM 5). It means he met at least six of eleven symptoms for an alcohol use disorder. Under the DSM 5 criteria for remission, he would be considered to be in sustained remission in that he had not exhibited any of the criteria for alcohol use disorder in more than one year. However, for his remission to be considered stable under the DSM, he would have to be free from any of the criteria of alcohol use disorder for over five years. Nothing in the AGs ties mitigation to the DSM criteria, but the DSM is instructive as it sheds some light on how professionals view alcohol use disorder.

Given the severity of Applicant's alcohol use disorder and medical evidence showing he was repeatedly advised to abstain, the issue becomes whether his present 2½ years free from alcohol is sufficient to demonstrate a clear and established pattern of abstinence. I have to consider his alcohol use in light of his history of self-medicating with alcohol to address his PTSD and depression. Applicant testified to an exacerbation of his depression in the month preceding his hearing. He exhibited good judgment by requesting an appointment with his VA psychiatrist rather than turning to alcohol. Some concern persists in that he does not have any current clinical support from a therapist or a self-help group and relies solely on an online program. He had not seen a therapist since about February 2021, and more than a year later, was still looking for a therapist. His recent promotion at work with a considerable increase in salary may provide a significant deterrent against relapse, but it is no guarantee. He would have had a stronger case in mitigation had he provided a recent, favorable assessment from a qualified clinician indicating that he will be able to sustain his sobriety with only the support of his family and girlfriend in light of his ongoing mental-health challenges. Applicant presented important mitigating information, but it falls short of fully mitigating the alcohol consumption security concerns. Despite having attended several treatment programs, he exhibited some minimization of his alcohol problem at his hearing in that he testified that his drinking was not out of control when he sought treatment in December 2019, even though evidence shows, and he admits, that he drank four bottles of vodka over four days in early December 2019.

**Guideline J: Criminal Conduct**

The security concern about criminal conduct is articulated 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 unwillingness to comply with laws, rules, and regulations." Applicant's three DUIs and violation of probation trigger one or more of the following disqualifying conditions under 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;
>
> (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; and
>
> (d) violation or revocation of parole or probation, or failure to complete a court-mandated rehabilitation program.

AG ¶ 31(b) merits some discussion with respect to Applicant's use of cocaine between March 2014 and November 2015. Cocaine is a Schedule II controlled substance under federal law pursuant to Title 21, Section 812 of the United States Code. Schedule II drugs are those which have a high potential for abuse; have a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions; and abuse may lead to severe psychological or physical dependence. Section 844 under Title 21 of the United States Code makes it unlawful for any person to knowingly or intentionally possess a controlled substance not obtained pursuant to a valid prescription. Federal law prohibits the possession of cocaine. It does not expressly criminalize the "use," but Applicant was in physical possession of cocaine when he used it. VA medical records indicate that he made sure that his cocaine dealer was available when he and his co-workers at the bar wanted the drug. The Appeal Board has held that the SOR is an administrative pleading that is not judged by the strict standards of a criminal indictment. *See*, *e.g*. ISCR 12-11375 at 6 (App. Bd. June 17, 2016) (citing ISCR Case No. 99-0554 at 4 (July 24, 2000)). Applicant was placed on sufficient notice that his cocaine involvement raised criminal conduct security concerns. Accordingly, AG ¶ 31(b) is implicated by his cocaine use and possession.

Two mitigating conditions under AG ¶ 32(a) have some applicability in this case. They are:

> (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

> (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.

The absence of any drunk-driving offense or any cocaine involvement in the last six years is some evidence in reform. Applicant is reported to have shown up for a drill weekend impaired by alcohol around November 2015, but the record before me does not indicate whether he drove himself to the drill weekend. Applicant was not asked whether he has operated a motor vehicle under the influence of alcohol since his August 2015 DUI arrest. With respect to his use of cocaine, Applicant has not worked at a bar since November 2015, and he no longer associates with those persons with whom he used cocaine in the past. Even so, for the reasons discussed under Guidelines G and H, the criminal conduct security concerns are not fully mitigated. Applicant testified that he complied with the terms of his criminal sentences. He provided no documentation in that regard. He was required to have an interlock-type device on his vehicle, and while he testified that it was removed some time ago, his credit report indicates that a $148 collection debt for his device from February 2020 was unpaid as of July 2022. Such information raises some doubt as to whether he complied with the terms of his sentence on time.

**Guideline H: Drug Involvement and Substance Misuse**

The security concerns about drug involvement and substance misuse are set forth in AG ¶ 24:

> 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.

Applicant used cocaine intermittently between March 2014 and November 2015. AG ¶ 25(a), "any substance misuse," is established. At the time, he held a security clearance for his duties in the ARNG. However, it is unclear whether he accessed classified information during that time. He had already lost his full-time position with the ARNG. In ISCR Case No. 20-03111 at 3 (App. Bd. Aug. 10, 2022), the Appeal Board stated:

> Eligibility for access to classified information and the granting of access to classified material are not synonymous concepts. There are separate determinations. The issuance of a security clearance is a determination that an individual is eligible for access to classified national security information up to a certain level. Security clearance eligibility alone does not grant an individual access to classified materials. In order to gain access to specific classified materials, an individual must have not only eligibility (*i.e*., a security clearance), but also must have signed a nondisclosure agreement and have a "need to know." *See* Executive Order 13526, dated December 29, 2009, at § 4.1. While an eligibility determination is generally made at the agency level and is subject to various regulatory due process requirements, an access determination is most often made at the local level without any due process guarantees.

As I read the Board's holding in that regard, eligibility for access to classified information is not enough to establish AG ¶ 25(f), "any illegal drug use while granted access to classified information or holding a sensitive position." Not enough is known about Applicant's weekend drilling duties to conclude that he had access to classified duties or held a sensitive position between March 2014 and November 2015 when he used cocaine.

AG ¶ 25(c), "illegal drug possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia," is triggered only in that he physically possessed cocaine to use it. It was not alleged that Applicant kept cocaine around, that he paid for the drug, or that he ever sold or distributed the drug. Medical records indicate that he may have had a cocaine dealer, but the information came to light only on review of the VA records submitted in evidence after his hearing.

AG ¶ 26 provides for mitigation of drug involvement and substance misuse security concerns as follows:

> (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 an individual's current reliability, trustworthiness, or good judgment;
>
> (b) the individual acknowledges his or 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

> illegal 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.

While Applicant's use of cocaine was noted by the VA during his various treatment programs, Applicant was never diagnosed with a cocaine abuse problem. However, his cocaine involvement is aggravated by the fact that it occurred while he held a security clearance for his ARNG duties. He had lost his full-time position in the ARNG before he started using cocaine, but he violated his obligations as a clearance holder by using cocaine. He asserts that he has disassociated himself from known drug users, and expressed an intention to avoid any cocaine use in the future. There is no evidence that he used cocaine during his serious and lengthy alcohol relapse from 2017 to December 2019. Nonetheless, some concern arises that Applicant may have minimized the extent of his cocaine use during his PSI and at his hearing. He told an OPM investigator in August 2018 that he used the drug three to five times for experimentation. He claimed he was alone in bar settings when using the drug. At his hearing, he testified that he was introduced to cocaine at the bar when he was drinking. He described his use of cocaine as intermittent. (Tr. 44.) He tested positive for cocaine in a drug screen. A May 21, 2016 clinical note in his VA records indicates, "he reportedly hired his cocaine dealer to work with him and his staff so that they could have access to him as needed." (Tr. 63.) It suggests more of an involvement with cocaine than he is willing to admit. Furthermore, his employment of a drug dealer may have facilitated the illegal drug involvement of other bar employees. The drug involvement and substance abuse security concerns are not fully mitigated under the circumstances.

**Guideline E: Personal Conduct**

The security concerns about personal conduct are set forth in AG ¶ 15, which provides:

> 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 Appeal Board has held that the same conduct can be alleged under different guidelines and weighed differently. Guideline E security concerns are raised by his disregard of his clearance obligation to remain drug free. His recidivist DUIs and use of cocaine with a clearance support "a whole-person assessment of questionable judgment" under AG ¶ 16(c), which states:

> (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 SOR also alleges under Guideline E that Applicant deliberately falsified his June 2018 SF 86 by responding negatively to the financial inquiries regarding any delinquency on routine accounts. Although Applicant admits that he answered "No," he denies any intent to falsify his application.

The Appeal Board has repeatedly held that, to establish a falsification, it is not enough merely to demonstrate that an applicant's answers were not true or accurate. To raise security concerns under Guideline E, the responses must be deliberately false. In analyzing an applicant's intent, the administrative judge must consider an applicant's answers in light of the record evidence as a whole. *See e.g.*, ISCR Case No. 14-05005 (App. Bd. Sep. 15, 2017).

A reasonable inference of intentional omission could be drawn from the objective evidence of the delinquent accounts listed on his July 2018 credit report. Applicant listed his largest debt (SOR ¶ 5.a) on his SF 86 as a debt involving enforcement because his wages were being garnished for the debt. He was still required to list it as a routine delinquency, but he failed to do so. However, he obviously did not conceal that debt. With regard to the other obligations, it was not shown that Applicant knew about the debts and chose not to list them. While he responded negatively to the questions regarding any routine delinquencies, he added on his SF 86, "Besides previously stated not that I can remember." When confronted about the delinquencies on his credit report during his August 2018 PSI, Applicant indicated he was unaware of the debts. Ignorance of his debts has negative implications for his financial responsibility, but it is a credible defense to intentional omission. The evidence falls short of establishing a knowing and willful falsification of his SF 86.

Two of the seven potentially mitigating conditions under AG ¶ 17 are relevant in this case. They are:

> (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; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

The passage of time weighs in Applicant's favor under AG ¶ 17(c). Even so, his drunk-driving and his use of cocaine in disregard of his clearance obligations, are all the more serious because of their recidivism. AG ¶ 17(d) has some applicability because Applicant received substance-abuse treatment after his August 2015 DUI and removed himself in November 2015 from the bar environment where cocaine was accessible to him. However, doubts persist for his judgment, reliability, and trustworthiness in some aspects. He believes that his alcohol and cocaine use were secondary problems to his mental-health issues, which while it may be accurate, it shows he does not fully acknowledge the problematic nature of his alcohol and drug abuse on their own.

Moreover, I am concerned about whether Applicant has been fully candid about the extent of his alcohol problem, cocaine use, and even his treatment efforts. In addition to downplaying the seriousness of his drinking in 2019, he initially gave the impression that he was currently seeing a private therapist ("I'll go for a couple of months [and] stop for a couple of months." Tr. 51), but then admitted that he had not seen a therapist for over a year. His therapeutic relationship with the clinician has apparently ended, as he is searching to find another therapist. As for his cocaine use, he told the OPM investigator that he used the drug three to five times for experimentation. He claimed he was alone when using the drug. Yet, at his hearing, he testified that he was introduced to cocaine at the bar when he was drinking. He described his use of cocaine as intermittent. (Tr. 44.) His VA records from 2015 and 2016, which were received after his hearing, indicate that he was reported to have had his cocaine dealer on retainer, which suggests that he may have been more involved with cocaine than a handful of uses. His reform is undermined to the extent that he minimizes his past involvement. The personal conduct security concerns are not fully mitigated.

**Guideline F: Financial Considerations**

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

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental

> health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . .

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

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

Guideline F security concerns are established when an individual does not pay financial obligations according to terms. Other than the car-loan deficiency in SOR ¶ 5.a, Applicant did not recognize the debts on his credit report when questioned about them during his August 2018 PSI. The Appeal Board has held that adverse information from a credit report can normally meet the substantial evidence standard. *See* ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015) (citing, *e.g.*, ISCR Case No. 03-20327 at 3 (App. Bd. Oct. 26, 2006)). The inclusion of all of the SOR debts on one or more of the credit reports in evidence is sufficient to establish the delinquencies. Applicant did not dispute the delinquencies when he responded to the SOR, although he asserted in January 2021 when he responded to interrogatories that half of the debts had been paid. Apparently, his wages were garnished for the debt in SOR ¶ 5.a starting in March 2018. It may be that the debt in SOR ¶ 5.a was resolved through involuntary garnishment before the SOR was issued. Even so, the federal government is still entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring the debt and failing to satisfy it in a timely manner. *See*, *e.g.*, ISCR Case No. 14-03991 at 2 (App. Bd. July 1, 2015). His record of delinquency establishes disqualifying conditions AG ¶¶ 19(a), "inability to satisfy debts," and 19(c), "a history of not meeting financial delinquencies."

Applicant bears the burden of mitigating the negative implications for his financial judgment raised by his proven delinquent debts. Application of the aforesaid disqualifying conditions triggers consideration of the potentially mitigating conditions under AG ¶ 20. The following are relevant to the issues 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; and

(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) cannot reasonably apply, even though the SOR debts were not incurred recently. Even assuming that his largest debt was resolved by garnishment of his wages between March 2018 and 2021, Applicant acknowledged that he was not proactive about investigating and resolving the delinquencies on his credit record. The debts in SOR ¶¶ 5.b through 5.j were brought to his attention during his August 2018 PSI. He testified that on receipt of the SOR, he realized that he could not put off dealing with his delinquencies any longer. An applicant's ongoing, unpaid debts evidence a continuing course of conduct and are considered recent. *See*, *e.g.*, ISCR 17-03146 at 2 (App. Bd. July 31, 2018), citing, *e.g.*, ISCR Case No. 15-08779 at 3 (App. Bd. Nov. 3, 2017).

Regarding AG ¶ 20(b), Applicant failed to provide any evidence to substantiate his claim that a significant portion of his income went to pay medical debts. He was unemployed from November 2015 to June 2016, while participating in treatment programs for his diagnosed PTSD and alcohol use disorder. While the circumstance that led to his unemployment was within his control, the loss of income caused some financial strain. Yet, AG ¶ 20(b) requires for mitigation that an individual act responsibly under his or her circumstances. A component of financial responsibility is whether Applicant maintained contact with his creditors and attempted to negotiate partial payments to keep debts current or payment plans for resolution of debt balances. There is no evidence that he did so. Some of the SOR accounts became delinquent while he was working for his current employer. AG ¶ 20(b) has limited applicability.

Applicant has repeatedly maintained that the car-loan debt in SOR ¶ 5.a has been fully satisfied. He provided no proof of the garnishment or of any other payment attempts on the debt, although it no longer appears on his credit record. Resolution of the debt through garnishment would warrant some consideration of AG ¶ 20(c) in that the debt would no longer be a source of undue financial pressure for him. However, resolution

through garnishment diminishes the mitigating weight of that evidence. *See*, *e.g.*, ISCR Case No. 14-05803 at 3 (App. Bd. July 7, 2016). Applicant has not had any financial counseling, which is required for full mitigation under AG ¶ 20(c), even though he acknowledges that he could benefit from courses on financial management.

Applicant asserts that he "just paid" the $185 utility-services debt in SOR ¶ 5.c; that the other utility debts in SOR ¶¶ 5.d and 5.f have been resolved because he currently has an account with the utility company that placed the debts for collection; that the insurance debts, including the debt in SOR ¶ 5.e, have been paid; that the $53 debt in SOR ¶ 5.i likely has been paid because of its small amount; and that the credit-card debt in SOR ¶ 5.k has been satisfied. The debts in SOR ¶¶ 5.e, 5.i, and 5.k appear on his July 2022 credit report as outstanding delinquencies. The other debts had been dropped from his credit report, but he provided no documentation showing they have been satisfied. The Appeal Board has held that "when an applicant claims to have resolved a debt, he or she is expected to present documentary evidence supporting the claim." *See* ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016).

Applicant is not required to show that he has paid off each debt in the SOR, or that the debts in the SOR be paid first. *See*, *e.g.*, ISCR Case No. 02-25499 at 2 (App. Bd. June 5, 2006). Yet the Appeal Board has also held that an applicant must demonstrate "a plan for debt payment, accompanied by concomitant conduct, that is, conduct that evidences a serious intent to resolve the debts." *See* ADP Case No. 17-00263 at 4 (App. Bd. Dec. 19, 2018) (citing, *e.g.*, ISCR Case No. 16-03889 at 5 (App. Bd. Aug. 9, 2018)). Applicant admits that he has not addressed the debts in SOR ¶¶ 5.b, 5.g, and 5.h. He appears to have confused the debt in SOR ¶ 5.j with a credit-card account that was paid off in 2021, but there is no evidence that he took any steps to check whether his understanding was correct. Consequently, a $3,923 balance has been in collections since 2018. Applicant has no payment plans in place for the debts in SOR ¶¶ 5.b, 5.g, 5.h, or 5.j. While their outstanding balances, which total $6,608, are manageable on his present income, a promise to pay a debt at some future date is not a substitute for a track record of timely debt payments or otherwise financially responsible behavior. *See* ISCR Case No, 07-13041 at 4 (App. Bd. Sep. 2008). Applicant has not made enough progress toward resolving his old delinquencies to apply AG ¶ 20(c) or AG ¶ 20(d). The financial considerations security concerns are not mitigated.

**Whole-Person Concept**

In assessing the whole person, the administrative judge must consider the totality of Applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). Those factors are:

> (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.

The analyses under Guidelines G, J, H, E, and F 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 commended for his service in the ARNG, which included combat duty that was a factor in him developing PTSD. He deserves considerable credit for seeking substance-abuse treatment in December 2019. His recognition that he needed help to stop drinking reflects that his previous treatment was of some benefit, despite his serious relapse. However, it is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is strong presumption against the grant or renewal of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). Applicant exercised very poor judgment in several different aspects. Based on the evidence of record, it is not clearly consistent with the interests of national security to grant or continue security clearance eligibility for Applicant at this time. This decision should not be construed as a determination that he cannot in the future attain the reform necessary to establish his security worthiness, but persuasive evidence of his security worthiness is lacking at this time.

## 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 G: | AGAINST APPLICANT |
| Subparagraphs 1.a-1.g: | Against Applicant |
| Paragraph 2, Guideline J: | AGAINST APPLICANT |
| Subparagraphs 2.a-2.b: | Against Applicant |
| Paragraph 3, Guideline H: | AGAINST APPLICANT |
| Subparagraphs 3.a-3.b: | Against Applicant |
| Paragraph 4, Guideline E: | AGAINST APPLICANT |
| Subparagraphs 4.a-4.b: | Against Applicant |
| Subparagraph 4.c: | For Applicant |
| Paragraph 5, Guideline F: | AGAINST APPLICANT |

Subparagraphs 5.a-5.k: Against Applicant

## Conclusion

In light of all of the circumstances, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Elizabeth M. Matchinski
Administrative Judge