



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 21-01982
)	
Applicant for Security Clearance)	

Appearances

For Government: Bryan J. Olmos, Esq., Department Counsel
For Applicant: *Pro se*

02/23/2023

Decision

HESS, Stephanie C., Administrative Judge:

Applicant experienced past financial difficulties due to circumstances that are were largely beyond his control, are unlikely to recur, and do not cast doubt on his current reliability, trustworthiness, or judgment. He has mitigated the alcohol consumption and criminal conduct concerns. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on October 19, 2020. On October 22, 2021, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guideline F (Financial Considerations), Guideline G (Alcohol Consumption), and Guideline J (Personal Conduct). The DOD acted under Executive Order (Ex. 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) effective June 8, 2017.

Applicant submitted his Answer to the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on December 9, 2021,

and the case was assigned to me on April 8, 2022. On September 30, 202, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for October 12, 2022. I convened the hearing as scheduled via Microsoft Teams video-teleconference. Government Exhibits (GX) 1 through 8 were admitted into evidence without objection. Applicant testified but did not submit any documentary evidence. I left the record open until October 28, 2022, to enable Applicant to submit documentary evidence. He timely submitted AX A through AX G, which were admitted without objection. DOHA received the transcript (Tr.) on October 19, 2022.

Findings of Fact

Applicant, 58, is a senior systems analyst currently employed by a defense contractor since June 2018. He has worked for defense contractors since 1995. He received his bachelor's of science in 1988. From 1989 until 1995, he served honorably on active duty in the U.S. Navy, where he held a security clearance. He married in 1989 and separated in 1995. He is uncertain if his divorce was ever finalized, however, his wife has since died. He has an adult stepdaughter. (GX 1; Tr. 40.)

Under Guideline F, the SOR alleges that Applicant failed to timely file and pay his 2015 and 2016 Federal and state taxes and that the filings and taxes remained outstanding. The SOR also alleges 11 delinquent accounts totaling \$58,249. The debts are comprised of credit-card accounts and utilities accounts. The SOR further alleges that the property associated with Applicant's first and second mortgage loans was foreclosed due to Applicant's inability to make his mortgage-loan payments. Applicant admits each of the debts with an explanation for why the debts were incurred.

Under Guideline G, the SOR alleges under that Applicant was arrested and charged with driving under the influence of alcohol (DUI) in 1987, 1988, 1984, and twice in 2019. Applicant admits each of the arrests and charges with an explanation of the circumstances and outcome of each event. The DUI arrests are cross-alleged under Guideline J.

The delinquent debts are reflected in Applicant's credit bureau reports (CBR) from January 2019 and December 2016, and discussed in his January 2018 personal subject interview (PSI). (GX 4; GX 3; GX 2.)

Financial Background

Since starting work as a defense contractor in 1997, Applicant had a history of financial stability. He lived within his means, stayed current on his ongoing financial obligations, and regularly contributed to his 401(k). He purchased his house in 2000 and maintained his mortgage-loan payments. In 2005, Applicant took out a second mortgage-loan on his home and maintained the payments. After 17 years of employment with the same defense contractor, Applicant was a project manager earning approximately \$125,000 a year.

Applicant and his former girlfriend began dating in approximately 2005, and at some point she moved into Applicant's house. She was employed and contributed to the household expenses. Applicant leased a car for her to use in 2011. (Tr. 67; GX 6.)

In January 2014, Applicant was laid off from his job when his employer's largest Government contract ended. Despite his efforts to gain work as a defense contractor, he was unable to do so. From January 2014 until December 2016, Applicant was self-employed as a consultant working for his former employer. While he was not earning as much as he had been, with his income, his savings, and later, several withdrawals from his 401(k), he was able to meet most of his financial obligations. He also used his credit-card accounts for living expenses. Applicant prioritized paying his mortgage-loan and vehicle-loan payments. He wanted to keep his house of 14 years and he needed his 2012 vehicle to go to job interviews and to work. (Tr. 24-25; Tr. 37; Tr. 55-56.)

Not long after Applicant was laid off, his former girlfriend ended the relationship and moved out. This increased Applicant's financial strain. Additionally, Applicant's former girlfriend had agreed to maintain the payments on the automobile lease that Applicant had secured in his name. She defaulted on the lease and created additional financial difficulties for Applicant. (Tr. 24-25; Tr. 67.)

In approximately 2015, Applicant's stepdaughter was employed at a bar and grill that went on the market for sale. She wanted to purchase the establishment but did not have the financial resources to do so, and asked Applicant to help with the purchase. Although Applicant had made some withdrawals for his own financial obligations, his 401(k) was still strong. He decided to make a withdrawal from his self-directed 401(k) to purchase the business with the agreement from his stepdaughter that she would manage it. Because he used existing financial resources, the investment did not have an immediate impact on Applicant's day-to-day finances. Within about a year, Applicant's stepdaughter lost interest in managing the business and sought other employment. Applicant lived an hour from the business, was not personally interested in running it, and was also busy with his consulting work. He sold the business in 2016 for less than he paid for it, and he estimates his total loss on investment was approximately \$20,000. (Tr. 42-44.)

Applicant's consulting contract ended in December 2016 and he was unemployed from January 2017 until November 2017. It was during this period of unemployment that he began to default on his financial obligations. Applicant's seven credit-card debts, totaling \$50,152 (SOR ¶¶ 3.c through 3.h and 3.m) dates of last activity were between August 2016 in October 2016 and the dates of first major delinquency are between March 2017 and November 2017. (GX 6; GX 7; GX 8.)

In approximately May 2017, Applicant was no longer able to maintain his mortgage-loan payments and he defaulted on both the first and second mortgage loans. In November 2017, Applicant started working at a shipping and receiving company as a truck loader and driver's helper. The work was seasonal, and Applicant frequently worked 16-hour days in an effort to earn enough money for his minimal living expenses. In

November 2017, Applicant lost his house in foreclosure and it was sold at auction. Applicant's mortgage loan was through the VA, and he does not owe a deficiency balance for either his primary or his second mortgage loans. His step-daughter rented a small trailer and Applicant rented a room from her. (Tr. 37; Tr. 61-68; GX 6; Tr. 25.)

In June 2018, Applicant's former supervisor from his defense contracting job, who was then employed as a supervisor at a small defense contractor, contacted Applicant about an employment opportunity. Applicant accepted the position and is currently working as an IT system administrator earning approximately \$90,000 per year. Applicant's daughter got married and moved, and Applicant remained living in the trailer because of the low expense. He continued to drive his 2012 vehicle, which he paid off in February 2020, until September 2020 when the vehicle reached a stage where it needed repairs that were greater than its value. He purchased a 2016 vehicle in September 2020 for necessary transportation to and from work. He has worked to maintain overall low living expenses. (Tr. 24-26; GX 8.)

Applicant is current on all his ongoing financial obligations, has not incurred any recent delinquent debts, and has a net monthly remainder. In November 2020, Applicant enrolled in a credit monitoring program with the major credit reporting agency. As of October 2022, his credit score has improved by 29 points. (Tr. 32; Tr. 60-61; GX 8, GX 7.)

Federal and State Taxes (SOR ¶¶ 3a. and 3.b)

While working as a consultant between 2014 and 2016, Applicant did not understand that he was required to pay his Federal taxes quarterly. It had been Applicant's practice to file his own tax returns using tax preparation software. For tax year 2015, he used a free online tax preparation calculator at a major tax preparation company's website. He entered his income from his consulting contract and calculated that his income did not require him to file a Federal tax return or to pay any taxes. It did not alert him to the requirement of paying quarterly taxes. Additionally, Applicant failed to enter the income from his 401(k) withdrawals, including the withdrawal to invest in the bar and grill, or from the income generated by the bar and grill 2015 until 2016. He did not file a Federal tax return for 2015 nor did he pay any Federal or state taxes. Applicant used the same online calculator for tax year 2016 and, again, did not file a Federal or state tax return and did not pay any taxes. (Tr. 44-52.)

Applicant was unemployed for the first four months of 2017 and did not earn enough income to be required to file a Federal tax return. At some point between 2017 in 2018, Applicant received a notice from the IRS that stated that the IRS would file substitute returns for Applicant for tax years 2015 and 2016. The notice listed Applicant's income for those two tax years and a total amount due for unpaid taxes, penalties, and interest in the approximate amount of \$16,000. The notice stated that Applicant could accept the amount due and proceed to a repayment plan or he could object and a different process would occur. Applicant was aware of the heightened security concerns regarding delinquent taxes. He accepted the amount due and agreed to pay it. (Tr. 45-56; Tr. 35.)

In 2019, the IRS garnished Applicant's wages at a rate of \$2,000 per month for eight months. Additionally, the IRS withheld Applicant's refunds for tax years 2018 through 2021. In May 2022, Applicant made his final payment to the IRS for his delinquent taxes in the approximate amount of \$1,200. (Tr. 26; Tr. 43; Tr. 54; Tr. 72.)

At some point between 2018 and 2020, Applicant learned that he also owed delinquent state income taxes in the amount of \$15,489. Beginning in September 2020, the state Department of Revenue garnished Applicant's pay in the amount of \$927 a month and withheld his tax refunds for 2019 and 2020. The garnishment was completed in April 2021 and Applicant received a state tax refund in the amount of \$334 for tax year 2021. Applicant timely paid his income taxes and filed his returns every year he was employed until 2015. Since 2018, Applicant has resumed doing so. (Tr. 45; Tr. 49-54; AX B.) SOR ¶¶ 3.a and 3.b have been resolved.

SOR ¶¶ 3.c through 3.o

Applicant was able to live within his means and not incur any additional delinquent debt while paying his tax debts. He did not want to overextend his finances by entering into repayment agreements with his other creditors while his tax debts were resolved. After Applicant satisfied his Federal and state tax debts, he contacted a financial counselor to help him address his other outstanding debts. In approximately June 2022, Applicant met with the financial counselor and provided him with financial documents including copies of the CBR's sent to Applicant by Department Counsel. The financial counselor told Applicant that he would review the financial documents and come up with a plan for satisfying the outstanding debts. (Tr. 70-73.)

However, the financial counselor Applicant intended to hire did not satisfactorily provide a plan to Applicant in a timely manner. After conducting some research, Applicant signed an agreement with a debt-relief agency and enrolled in a debt-resolution program. Under the terms of the agreement, Applicant will pay the debt-relief agency \$884 a month through automatic debit for an estimated 53 months. Applicant was required to submit a list of creditors to the debt-relief company which was comprised the debts alleged in SOR ¶¶ 3.c through 3.k. These debts total \$56,948. The debts alleged in SOR ¶¶ 3.c through 3.m are being resolved. The creditor listing did not include the \$124 debt alleged in SOR ¶ 3.l with a \$1,360 debt alleged in SOR ¶ 3.m. (AX C.)

Applicant signed the agreement on October 25, 2022. The agreement included a provision where Applicant could elect to pursue bankruptcy to resolve his outstanding debts, and Applicant opted to repay his creditors in lieu of bankruptcy. The agreement also included a provision under which Applicant agreed to not pay any of his outstanding debts that were no longer collectible under the state's statute of limitations. Applicant also opted out of the application of this provision. His first automated payment was made in November 2022. (AX C.)

On that same day, Applicant sent an email to the debt-relief company wherein he stated that he had unintentionally failed to include a \$7,800 debt he owed to the IRS for unpaid taxes from 2014. He asked if the debt-relief company would work with the IRS or if he should contact the IRS directly to resolve that debt independently. (AX C.)

Alcohol Consumption and Criminal Conduct

Applicant was arrested and charged with driving under the influence of alcohol (DUI) in June 1987 while he was still in college. He was intoxicated at the time of the arrest and testified that he knows he should not have been driving. He accepted responsibility for his conduct by pleading guilty to the charge, a misdemeanor. He was fined and his driver's license was suspended for 90 days. He was arrested and charged with DUI in June 1988 while he was still in college. Applicant testified that he was not intoxicated. The charge was dismissed. Applicant listed these charges on his first security clearance application. In June 1994, while in the Navy, Applicant was arrested and charged with DUI. He testified that he was not intoxicated. He was convicted of the reduced charge of reckless driving and fined. As a result of this charge, Applicant was required by his command to complete an alcohol education class. The program taught how alcohol affected people, stating that an average man's liver processed approximately one drink per hour. After learning this, Applicant became more cognizant of his drinking and was mindful to never consume more than one drink per hour. Applicant disclosed these DUI arrests as required on subsequent security clearance applications. (GX 1; Tr. 16; Tr. 31; Tr. 76-81; GX 2; Answer.)

Applicant has been shooting pool in a league that meets on Friday nights for a number of years. In July 2019, Applicant was in a bar shooting pool. He had two or three beers over the course of the evening and was not intoxicated. After having been there for a while, Applicant became aware that several players from the other team were at the bar and behaving in an aggressive and angry manner. Applicant left the bar and as he was driving away, a vehicle cut him off and shine a spotlight in his face. Concerned that it was the players from the other team, Applicant sped up and drove away fast. The other car, which turned out to be an unmarked police car, followed Applicant's car, gained on him, and turned on its lights and pulled Applicant over. (Tr. 76-77; GX 2.)

The officer asked Applicant where he had been and he explained that he had been at a bar shooting pool with his pool league. The officer asked Applicant to take a breathalyzer, but he refused. The officer also asked Applicant to take a field sobriety test which he instructed Applicant to perform on the sloped side of the road which was wet from rain. Applicant asked the officer if he could perform the field sobriety test on the road where it was flat, but the officer said it was too dangerous. Applicant had been advised by a friend who is an attorney never to take the roadside breathalyzer and never to perform a field sobriety test because the field sobriety test was too objective. (Tr. 76-77; GX 2.)

The officer arrested Applicant. He was detained in jail overnight and released the following morning on his own recognizance. In Applicant's state of residence, refusing a

breathalyzer results in the automatic suspension of your driver's license. However, the defendant is entitled to a civil hearing where the state's attorney must present evidence of the defendant's intoxication. In Applicant's case, the state's attorney was unable to do so and Applicant's driver's license was reinstated. Applicant and his attorney appeared in criminal court and the DUI charge was dismissed and Applicant was charged with careless operations, a moving violation, and fined \$400. The DUI arrest and charge were expunged from Applicant's record on August 25, 2022. (Tr. 18-21; GX 2; AX D.)

In September 2019, Applicant had been shooting pool with his pool league at a bar and had to or three beers while playing and was not intoxicated. He later left the bar to run some errands and returned a few hours later to pick up his friend, who was intoxicated. While driving the friend home, Applicant was pulled over for speeding. Applicant's friend was behaving belligerently towards the deputy. The deputy smelled alcohol in the vehicle and asked Applicant to take a field sobriety test. Applicant refused, and the deputy arrested him on suspicion of driving under the influence of alcohol. He was detained overnight at the Sheriff's office and release the following morning on personal recognizance. He appeared in court in February 2020, the deputy did not, and the case was dismissed. (Tr. 18-22; GX 2.)

Since 2019, Applicant has modified his consumption of alcohol. Despite having been taught that he could metabolize one drink per hour, when Applicant plays pool at bars with his pool league, he has only one beer, with food, shortly after arriving. He stated that he has learned that having an officer smell alcohol in the vehicle, regardless of whether or not the driver is under the influence of alcohol, can result in a DUI charge and he does not want to behave in any manner that could jeopardize his security clearance. Applicant has also overall reduced his alcohol consumption because of the past DUI charges. He does not consume any alcohol on weekdays. Occasionally on weekends, when his grandson is not staying with him, Applicant visits a friend's house to play pool on Saturday night. Applicant will consume 4 to 5 beers during the course of the night, and will then spend the night. Applicant testified that his alcohol consumption has not had any other negative impact on his professional or personal life. (Tr. 16-23; Tr. 77-81.)

Character References

Applicant submitted seven character-reference letters. The letters were from his former supervisor from June 2018 until September 2019; Applicant's brother-in-law, a retired military officer who has known Applicant since 1981; a friend who has known Applicant for over 15 years and considers him to be a peer in the industry; a former coworker who is known Applicant for over three years; Applicant's current supervisor on one of the contracts on which Applicant works who met him socially in approximately 2008; Applicant's other supervisor since 2018; and, a partner in the company for which Applicant currently works who first hired Applicant in 1997 and considers Applicant a friend. Collectively, Applicant's character references described Applicant as a man of integrity with sound judgment and as reliable, trustworthy, and moral. He has a reputation of steadfastly following rules and regulations, particularly in classified settings, and they highly recommend him for maintaining his security clearance. (AX F.) Applicant's 2018

through 2022 performance evaluations were outstanding. He received annual merit-base salary increases. (AX E.) Applicant was candid, sincere, and credible while testifying.

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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant’s meeting the criteria contained in the AG. 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.” See 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. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

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

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds....

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual 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 testimony, corroborated by the record evidence, establishes two disqualifying conditions under this guideline:

AG ¶ 19(a) inability to satisfy debts;

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

AG ¶ 19(f): failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

However, a person can mitigate concerns about his or her ability to handle and safeguard classified information raised by his or her financial circumstances by establishing one or more of the mitigating conditions listed under the guideline. The relevant mitigating conditions in this case are:

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

AG ¶ 20(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's financial issues arose over nine years ago under circumstances largely beyond his control. Specifically, in January 2014, Applicant was laid off from his job of over 17 years. Despite his efforts, he did not regain full time employment in his field until June 2018, and has not yet achieved as high a salary as he had at the time of being laid off. From 2014 until 2016, he was underemployed as a consultant and while working for a shipping and receiving company. Not long after he was laid off, Applicant's former girlfriend moved out and created additional financial stress for Applicant. After Applicant's consulting contract expired in December 2016, he was unemployed until November 2017.

In 2015, in an attempt to help secure reliable future employment for his step-daughter, and at her request, Applicant used part of the funds in his self-directed 401(k), not his income, to invest in a bar and grill for her to manage. Approximately one year later, Applicant's step-daughter opted to change her career path, and Applicant sold the business for a loss. His total loss on investment was approximately \$20,000. While this investment can, retrospectively, be characterized as a poor investment, Applicant was able to afford it at the time.

While working as a consultant, Applicant did not understand his tax reporting and payment requirements. He also did not properly include the money he borrowed from his 401(k), including for the investment, as income when using an online calculator to calculate his taxes. He ended up owing a significant amount of Federal and state taxes for tax years 2015 and 2016.

While underemployed, Applicant struggled to meet his financial obligations. In an effort to keep his house, Applicant exhausted his financial resources, borrowed from his 401(k), and accrued significant credit-card debt in order to maintain his mortgage-loan payments. However, during his 11-month period of unemployment, Applicant defaulted

on his mortgage loan and on his credit-card payments. Ultimately, he lost the house that he had owned for more than 17 years, as well as the equity in it, in foreclosure in 2017.

Although his tax debts were repaid through garnishment, Applicant acted responsibly regarding his taxes by accepting the IRS's tax assessment and agreeing to pay it. Applicant's delinquent state taxes were paid in full by April 2021 and his Federal tax debt was satisfied in May 2022.

Since satisfying his tax debts, Applicant has now committed to repay his other delinquent debts. The monthly payment to the debt-relief company is significantly less than the monthly payment that Applicant made to resolve his outstanding taxes. Applicant was able to live within his means while repaying his taxes and will be able to do so while repaying his other delinquent accounts.

"Good faith" means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). A security clearance adjudication is an evaluation of a person's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) A person is not required to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that a person make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) A person is not required to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant's history of overall financial stability, his resolution of his tax debts as alleged in the SOR, and his current financial circumstances are sufficient to establish a track record of financial responsibility. He is focused on proper money management which is demonstrated by the fact that he has not incurred any recent delinquent debt, lives within his means, routinely monitors his credit, and has hired a debt-relief company to resolve his remaining delinquent debts. He established a plan to resolve his delinquent debts and has implemented that plan. Although his financial record is not perfect, Applicant's past financial issues do not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶¶ 20(a), 20(b), 20(d), and 20 (g) apply.

Guideline G, Alcohol Consumption

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

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

The following disqualifying condition applies:

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.

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; and

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.

More than three years have passed since Applicant's last DUI arrest in September 2019 and more than 35 years have passed since his single conviction for DUI in 1987 while in college. Applicant admits that he was driving under the influence of alcohol in 1987, that his conduct was wrong, and that he accepted responsibility for his behavior by pleading guilty to the charge. He was arrested and charged with DUI in 1988 and the charge was dismissed. He was arrested and charged with DUI in 1994 and the charge was reduced to reckless driving. He was arrested and charged in July 2019 with DUI, the DUI charge was dismissed, Applicant pled guilty to careless operations, a moving violation, and the record of the DUI arrest and charge was expunged. He was arrested and charged with DUI in September 2019 and the charge was dismissed. He disclosed his DUI arrests on his security clearance applications as required.

Applicant has reduced his overall alcohol consumption since 2019. He never consumes alcohol on weekdays and his infrequent alcohol consumption is moderate. He does not drive after having had more than one beer.

The Directive does not define “recent,” and there is no “bright-line” definition of what constitutes “recent” conduct. 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).

Appellant has appropriately modified his alcohol consumption and more fully understands the negative impact that irresponsible alcohol use could have on his security clearance as well his personal life. Appellant’s past conduct is not recent and is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or judgment. AG ¶¶ 23(a) and 23(b) apply.

Guideline J, Criminal Conduct

The concern raised by criminal conduct 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 following disqualifying conditions apply 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, and admission, and matters of official record) of criminal conduct, regardless of whether the person was formally charged, formally 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.

Applicant was arrested, charged, and pled guilty to DUI in 1987. He was arrested and charged with DUI in 1988 and the charge was dismissed. He was arrested and charged with DUI 1994 and the charge was reduced to reckless driving. He was arrested and charged with DUI in July 2019, the charge was dismissed, and the record was expunged. He was arrested and charged with DUI in September 2019 the charge was dismissed.

Applicant's only DUI conviction was more than 30 years ago. Between 1994 and 2019, a period of 25 years, Applicant was not charged with any crime or violation. It has been over three years since Applicant was charged with DUI. While Applicant has unequivocally stated that he was only guilty of driving under the influence of alcohol during his first arrest in 1987, he has nonetheless modified his alcohol consumption to the maximum of one beer with food hours before driving and reduced his overall alcohol consumption. He does not want to behave in any manner that could potentially jeopardize his security clearance. He has a professional reputation as having good judgment, being reliable, and being trustworthy. He has received outstanding evaluations since he has worked for his current employer beginning in 2018. AG ¶¶ 32(a) and 32(d) apply.

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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but I have also considered the following:

Applicant served honorably in the Navy and has held a security clearance for over 32 years. He has a professional and personal reputation of being a person with great integrity who exercises good judgment and is reliable and trustworthy. He satisfied the tax debts alleged in the SOR and has committed to a repayment plan for his remaining outstanding debts, including the 2014 Federal tax debt. Applicant has modified his alcohol

consumption and is committed to avoiding any conduct that could jeopardize his security clearance. He was credible and sincere during this testimony.

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 mitigated the security concerns raised by his delinquent debts and past conduct. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline G (Alcohol Consumption):	FOR APPLICANT
Subparagraphs 1.a – 1.e:	For Applicant
Paragraph 2, Guideline J (Criminal Conduct):	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline F (Financial Considerations):	FOR APPLICANT
Subparagraphs 3.a – 1.o:	For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Stephanie C. Hess
Administrative Judge