



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 13-00389

**Appearances**

For Government: Christopher Morin, Esquire, Department Counsel  
For Applicant: Lori Arnold, Personal Representative

02/18/2014

**Decision**

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding drug involvement, alcohol consumption, and financial considerations. Eligibility for a security clearance and access to classified information is granted.

**Statement of the Case**

On June 12, 2012, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.<sup>1</sup> On March 4, 2013, the Department of Defense (DOD) issued him a set of interrogatories. He responded to the interrogatories on March 22, 2013.<sup>2</sup> On an unspecified date, the DOD issued him another set of interrogatories. He responded to the interrogatories on March 22, 2013.<sup>3</sup> On an unspecified date, the DOD issued him another set of interrogatories. He responded to the interrogatories on March

<sup>1</sup> GE 1 (SF 86, dated June 12, 2012).

<sup>2</sup> GE 3 (Applicant's Answers to Interrogatories, dated March 22, 2013).

<sup>3</sup> GE 4 (Applicant's Answers to Interrogatories, dated March 22, 2013).

23, 2013.<sup>4</sup> On an unspecified date, the DOD issued him another set of interrogatories. He responded to the interrogatories on March 24, 2013.<sup>5</sup> On May 16, 2013, the DOD issued a Statement of Reasons (SOR) to him, under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guidelines H (Drug Involvement), G (Alcohol Consumption), and F (Financial Considerations), and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on June 10, 2013. In a sworn statement, dated June 18, 2013, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on August 12, 2013. The case was assigned to me on August 19, 2013. A Notice of Hearing was initially issued on December 3, 2013, but amended on December 6, 2013, and I convened the hearing, as scheduled, on December 17, 2013.<sup>6</sup>

During the hearing, 7 Government exhibits (GE 1 through GE 7) and 16 Applicant exhibits (AE A through AE P) were admitted into evidence without objection. Applicant testified. The transcript of the hearing (Tr.) was received on January 2, 2014. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity. He submitted additional documents which were marked as Applicant exhibits (AE Q through AE AO) and admitted into evidence without objection. The record closed on January 10, 2014.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted all of the factual allegations in the SOR under drug involvement (¶¶ 1.a. and 1.b.), one factual allegation under alcohol consumption (¶ 2.a.), portions of other factual allegations under alcohol consumption (¶¶ 2.b. and 2.c.), as well as four allegations under financial conditions (¶¶ 3.a., 3.c.,

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<sup>4</sup> GE 2 (Applicant's Answers to Interrogatories, dated March 23, 2013).

<sup>5</sup> GE 5 (Applicant's Answers to Interrogatories, dated March 24, 2013).

<sup>6</sup> The Directive established that notification as to the time and place of a hearing be furnished to an applicant at least 15 days in advance of the time of the hearing. See, Directive, Encl. 3, § E3.1.8. In this instance, Department Counsel and Applicant were in discussions regarding the potential time and location long before the actual Notice of Hearing was issued. Nevertheless, because the period between the issuance of the Notice and the hearing was less than 15 days, I inquired of Applicant if the period of notice was sufficient, and Applicant specifically waived the 15-day notice requirement. See, Tr. at 15.

3.d., and 3.f.). He denied the remaining allegations or portions thereof. Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 39-year-old employee of a defense contractor. He has been serving as the chief operating officer with his current employer since June 2007, but because of issues discussed further below which have caused a major rupture in his relationship with his partner, he continues to play a very small role in the company.<sup>7</sup> He was an enlisted member of the National Guard from 2007 to 2012, and was on active duty with the U.S. Army from January 1997 until March 2006, and again from January 2009 until March 2009.<sup>8</sup> Applicant was granted a secret security clearance in May 2002.<sup>9</sup> He received a General Educational Development (GED) diploma in 1993,<sup>10</sup> attended college for about one semester, and is currently enrolled in another college program.<sup>11</sup> Applicant was married the first time in January 1998, and divorced in January 2000. He married his second wife in June 2002, and they divorced in March 2013.<sup>12</sup> Applicant and his second wife have one daughter, born in August 2003.<sup>13</sup>

## **Military Service**

Trained by the U.S. Army as an engineer, infantryman, parachutist, scuba diver, and ranger, Applicant was deployed on four occasions, including deployments to Haiti, Egypt, and twice to Afghanistan. During his military service, he was awarded the Silver Star (for gallantry in action during a combined joint special operation in Afghanistan), the Bronze Star Medal (two awards), the Purple Heart, the Joint Service Commendation Medal, the Army Commendation Medal, the Joint Service Achievement Medal, the Army Achievement Medal, the Army Good Conduct Medal (two awards), the National Defense Service Medal, the Armed Forces Service Medal, the Non-Commissioned Officer Professional Development Ribbon (two awards), the Army Service Ribbon, the Multinational Force and Observers medal, the Global War on Terrorism Expeditionary

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<sup>7</sup> GE 1, *supra* note 1, at 10-11; Tr. at 64. Among the activities performed by the company under contract to the U.S. military are training pre-Iraq/Afghanistan deployment U.S. military personnel in human intelligence gathering and operations, civil affairs, cross-cultural communication, and key leader engagement. See AE U (News Article, Dated January 10, 2014); AE V (News Article, Dated August 23, 2010); AE W (News Article, undated); AE X (Certificates of Appreciation, various dates).

<sup>8</sup> AE Y (Certificate of Release or Discharge from Active Duty (DD Form 214), dated March 24, 2006); AE Z, DD Form 214, dated March 25, 2009).

<sup>9</sup> GE 7 (Joint Personnel Adjudication System (JPAS) Person Summary, dated December 9, 2013).

<sup>10</sup> Tr. at 8.

<sup>11</sup> Tr. at 7; AE AM (Student Program Audit Report, dated October 11, 2013); AE I (Letter, dated October 17, 2013); Registry Transcript, dated December 16, 2011); AE M (Letter, dated October 1, 2013).

<sup>12</sup> Tr. at 97; GE 1, *supra* note 1, at 18 (Applicant indicated he was divorced in April 2010). *But see* AE AH (Post-Separation Support Order, dated June 4, 2010).

<sup>13</sup> AE AH, *supra* note 12, at 2.

Medal, the Global War on Terrorism Service Medal, the American Campaign Medal, the Afghanistan Campaign Medal, the Combat Infantry Badge, the Scuba Diver Badge, the Master Parachutist Badge, the Parachutist Badge, and the Ranger Tab.<sup>14</sup>

## Medical Issues

As a direct result of the service-connected injuries that Applicant received in Afghanistan for which he was awarded the Purple Heart, as well as other combat-related issues, in May 2012, the U.S. Department of Veterans Affairs (DVA) concluded that Applicant had post-traumatic stress disorder (PTSD), to include substance abuse, as well as traumatic brain injury (TBI), and granted him a 50 percent disability rating, effective May 26, 2011.<sup>15</sup> Among the symptoms for such a rating are: flattened affect; panic attacks more than once a week; impairment of short- and long-term memory; impaired judgment; impaired abstract thinking; disturbances of motivation and mood; and difficulty in establishing and maintaining effective and social relationships.<sup>16</sup> On December 1, 2012, his service-connected evaluation was increased to 70 percent.<sup>17</sup> Among the symptoms for such an increased rating are: deficiencies in work, family relations, judgment, thinking, or mood, due to suicidal ideation; impaired impulse control; and difficulty in adapting to stressful circumstances.<sup>18</sup> As a result of his increased disability, Applicant receives a monthly monetary award of \$1,293.<sup>19</sup> In November 2013, Applicant entered a Trauma Recovery Program (TRP) under the direction of a psychologist and a social worker.<sup>20</sup>

Although he had been wounded in combat during his 2005 deployment, and had secretly been struggling with PTSD since that time, Applicant was reluctant to admit he was injured, and believing he could still do his job, he volunteered for another deployment. Upon his return, he realized the “horrible stigma” it was having PTSD, and he decided to leave the military.<sup>21</sup> He was reluctant to admit his physical and emotional maladies, and was under tremendous stress and pain, and unable to sleep. When Applicant was examined by the DVA, the examiner noted that his PTSD included “bitterness, jumpiness, often angry, do not like being near people, ashamed, guilty

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<sup>14</sup> AE Y, *supra* note 8; AE Z, *supra* note 8, AE O (The Silver Star Certificate and Narrative, dated October 20, 2004); AE AA (The Silver Star Certificate, dated October 20, 2004); AE N (Permanent Orders, dated August 24, 2002); AE P (Permanent Orders, dated March 9, 2007); Tr. at 59, 86. Applicant contends he was injured twice by improvised explosive devices (IEDs), and as such, he was awarded two Purple Heart Medals.

<sup>15</sup> AE J (DAV Rating Decision, dated May 2, 2012).

<sup>16</sup> AE J, *supra* note 15, at 3.

<sup>17</sup> AE K (DAV Summary of Benefits, dated March 6, 2013).

<sup>18</sup> AE J, *supra* note 15, at 3.

<sup>19</sup> AE K, *supra* note 16.

<sup>20</sup> AE T (TRP Newsletter, dated September 2013).

<sup>21</sup> Tr. at 59-61.

feelings, seclusion, sleep difficulties, hypervigilance and anxiety.”<sup>22</sup> He also noted that Applicant’s alcohol abuse began prior to traumatic abuse occurring but worsened over time and includes excessive use and continued use despite negative consequences; the substance abuse is related to Axis I diagnosis of PTSD; and it was exacerbated by PTSD symptoms.<sup>23</sup>

## Drug Involvement

Applicant had used marijuana on an unspecified number of occasions when he was a young teenager, but abstained from further marijuana use throughout his entire active duty military career, and thereafter until mid-2011.<sup>24</sup> However, in an effort to relieve his stress and pain, as well as to enable him to sleep, Applicant started to self-medicate, initially using alcohol, but later using marijuana as well, to do so.<sup>25</sup> During the relatively brief period from May 2011 until July 2011, Applicant smoked one marijuana “joint” per week in an effort to reduce his stress, manage his pain, and enable him to sleep. The marijuana had a calming effect, made him more relaxed, and helped him sleep.<sup>26</sup> However, on the negative side, the marijuana impaired his judgment, made him paranoid, and impacted his relationship with his girlfriend.<sup>27</sup>

During the period of his marijuana use, Applicant never purchased, sold, supplied, manufactured, or grew the marijuana.<sup>28</sup> Instead, he had a friend – a former military buddy who was coping with the same medical issues – who periodically offered Applicant the marijuana for free.<sup>29</sup>

Commencing in May 2011, Applicant was screened for substance use disorder and enrolled in the out-patient treatment program of the chemical addictions rehabilitation program (CARP) at a DVA clinic and a DVA medical center. He completed a Seeking Safety Group program at the medical center in November 2011,<sup>30</sup> and in February 2012, completed 90 hours of substance abuse disorder specific treatment at the DVA clinic.<sup>31</sup> There is no evidence that Applicant was ever diagnosed with drug abuse or drug dependence. Applicant contends that his marijuana use was actually a

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<sup>22</sup> AE J, *supra* note 15, at 2.

<sup>23</sup> AE J, *supra* note 15, at 2-3.

<sup>24</sup> Tr. at 58.

<sup>25</sup> GE 3 (Personal Subject Interview, dated July 18, 2012), at 7; GE 4, *supra* note 3, at 4.

<sup>26</sup> GE 3, *supra* note 25, at 7.

<sup>27</sup> GE 3, *supra* note 25, at 7.

<sup>28</sup> GE 3, *supra* note 25, at 7.

<sup>29</sup> Tr. at 65-66.

<sup>30</sup> AE S (Certificate, dated November 4, 2011).

<sup>31</sup> AE S (Letter, dated December 18, 2013).

small part of his alcohol abuse.<sup>32</sup> At some point during his DVA treatment for the alcohol-related issues, and finally recognizing substance abuse is not healthy and is illegal, Applicant decided to stop using all such substances. He has completely disassociated himself from all drug-using individuals and has avoided the environments where drugs are used.<sup>33</sup> He has vowed to never use marijuana again.<sup>34</sup>

## **Alcohol Consumption**

Applicant started experimenting with alcohol by having two to four beers with friends with an unspecified frequency, due to peer pressure, when he was 16 years old. His alcohol consumption remained unremarkable until about 2002 following his first combat tour as a special-forces soldier. His consumption increased to a six-pack of beer, two to three days per week. In 2008, Applicant increased the quantity and frequency of his alcohol consumption to a six-pack of beer a day and a couple of mixed drinks for four to five days per week. At times, he would consume up to 8 to 12 drinks over an unspecified period. His drinking pattern remained unchanged until the winter of 2009 after he returned from another combat deployment.<sup>35</sup> Applicant's pattern of alcohol consumption between that point and May 2011 has not been developed.

When he was consuming alcohol, Applicant did so with friends and coworkers at parties and social gatherings. Alcohol generally made him quiet, but also led him to exercise poor judgment. At times, he became loud and obnoxious. Two beers might intoxicate him and give him slurred speech.<sup>36</sup> It also resulted in three alcohol-related incidents with police authorities.

In October 1999, the evening after returning home from a six-month deployment to Haiti, Applicant attended his infantry company party and consumed an unspecified quantity of alcohol. On the way home, he was stopped by the police and administered a field sobriety test. Being "young and stupid," and not feeling drunk, he refused to take the breathalyzer.<sup>37</sup> He was charged with driving while impaired (DWI), refused chemical test, and 30-day civil revocation (suspension).<sup>38</sup> He was found guilty of DWI – Level 5,

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<sup>32</sup> Tr. at 67.

<sup>33</sup> AE AO (Closing Argument, undated), at 2.

<sup>34</sup> GE 4, *supra* note 3, at 1-3.

<sup>35</sup> GE 3, *supra* note 25, at 6.

<sup>36</sup> GE 3, *supra* note 25, at 6.

<sup>37</sup> Tr. at 82-83.

<sup>38</sup> AE Q (Driving Record, dated November 13, 2013), at 3. Under the laws of the state where the incident occurred, there may be a pretrial revocation of driving privileges for a driver facing an alcohol related offense. Among the reasons for such an action is where the driver refused to submit to an implied consent offense. Typically, upon being charged with an offense where a pretrial revocation occurs, the driver's license is suspended for 30 days. Hence, the 30 Day Civil Revocation. Tr. at 79.

and sentenced to 60 days confinement (suspended), \$186 in fines and costs, placed on probation for 12 months, and his operator's license was suspended for one year.<sup>39</sup>

In July 2008, after returning home from a deployment to Afghanistan, Applicant went to a local bar to meet some friends and consumed four to five beers over the course of about three hours. He departed the bar, intending to go to a friend's residence, when he was stopped by the police after failing to completely stop at a stop sign. He was administered a field sobriety test which he purportedly passed. Once again, he refused to take a Breathalyzer. He was arrested for what Applicant called suspicion of DWI.<sup>40</sup> The records of the charges and disposition of those charges are inconsistent and in dispute. The driving record from the state indicates Applicant was charged with DWI, refused chemical test, and 30-day civil revocation (suspension), while the SOR alleged failure to comply with community service as well.<sup>41</sup> He was found guilty as charged by the state, and sentenced to one year of unsupervised probation, 24 hours of community service, suspension of his operator's license for one year, ordered to complete 40 hours of alcohol counseling, and fines and costs. There is no evidence that he was also sentenced to confinement for two months, as alleged in the SOR.<sup>42</sup>

A third alcohol-related incident occurred in April 2011. Applicant and his girlfriend attended a wedding and he had consumed two beers during the reception. His girlfriend was driving them from the wedding to where they intended to spend the night. An unmarked police car chased a vehicle past them at a high rate of speed, and Applicant's girlfriend pulled the car over to the side of the road to enable them to pass. They got out of the car to change drivers, and shortly after Applicant drove away, the police stopped him. He was administered a field sobriety test which he purportedly passed. This time, however, he agreed to take the Breathalyzer, but it registered a blood alcohol level of 0.08 percent.<sup>43</sup> He was charged with DWI and 30-day civil revocation (suspension).<sup>44</sup> He was found guilty as charged, and sentenced to 30-days confinement, probation for 14 months, revocation of his operator's license, and fines and costs.<sup>45</sup>

As noted above, in May 2011, shortly after his third DWI, Applicant sought help and was screened for substance use disorder and enrolled in CARP. He completed a 7-day in-patient alcohol therapy and then completed an intensive out-patient therapy program. In February 2012, he completed 90 hours (twice a week for nine months) of substance abuse disorder specific treatment at the DVA clinic. He completed exposure

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<sup>39</sup> Tr. at 83; Applicant's Answer to the SOR, at 1.

<sup>40</sup> Tr. at 76-77

<sup>41</sup> AE Q, *supra* note 38, at 2; Tr. at 77-82.

<sup>42</sup> GE 3, *supra* note 25, at 4-5; AE Q, *supra* note 38, at 2; Tr. at 77-82.

<sup>43</sup> GE 3, *supra* note 25, at 5; Tr. at 70-71, 87-89.

<sup>44</sup> AE Q, *supra* note 38, at 1; Tr. at 71-73.

<sup>45</sup> Tr. at 71-74.

therapy for PTSD (three to four days per week for 16 weeks) and the Seeking Safety program (three to four days per week for 16 weeks), and is currently in the trauma recovery program.<sup>46</sup> There is no evidence that Applicant was ever diagnosed with alcohol abuse or alcohol dependence.

The DVA advised him to straighten up, avoid his bad relationships, and “get away from the drinking, the partying, the getting together on a Friday night and slamming beers, and telling war stories.”<sup>47</sup> Applicant soon realized that “things started to make some sense.”<sup>48</sup> So, finally recognizing the negative impact alcohol was having on his life, Applicant used the coping tools and skills he had learned in his various therapy programs, and decided to stop consuming alcohol. He completely changed his life related to alcohol and has a happy relationship with his girlfriend and his daughter.<sup>49</sup> He stopped drinking, “pushed away from all of those old relationships, [and] severed ties with a lot of the work hard, play hard, community.”<sup>50</sup> Applicant has been abstinent since June 2011,<sup>51</sup> and has no desire, even on his worst day, to consume alcohol.<sup>52</sup>

Having already started one company, Applicant is now putting his experiences into establishing a foundation to provide other veterans coping with PTSD, TBI, and the associated issues of alcohol consumption, the support they need to rebuild their lives. He hopes to provide guidance and direction to assist them to begin to heal, rather than having them use alcohol as a coping mechanism and enduring the shame they feel about getting the help they deserve.<sup>53</sup>

## Financial Considerations

When Applicant was deployed, he had given his wife a power of attorney and she was expected to manage the family finances while he was away. Instead, she opened new accounts and failed to pay the incoming bills.<sup>54</sup> As a result, some accounts became past due, and were placed for collection or charged off. It is unclear as to when Applicant’s finances initially fell into disarray, for he apparently did not learn about their

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<sup>46</sup> Tr. at 85-86.

<sup>47</sup> Tr. at 66.

<sup>48</sup> Tr. at 91.

<sup>49</sup> GE 5, *supra* note 5, at 3.

<sup>50</sup> Tr. at 66.

<sup>51</sup> GE 5, *supra* note 5, at 1, 3.

<sup>52</sup> AE AO, *supra* note 33, at 2.

<sup>53</sup> AE AO, *supra* note 33, at 2-3.

<sup>54</sup> AE AO, *supra* note 33, at 1; Tr. at 109. Applicant also charged that his wife had used “forged” powers of attorney, later characterized as “unauthorized” use of those powers, for years after he left the military, but there was no positive resolution obtained as a result of his reports to the police. See Tr. at 155-157. He offered no documentation to support his charges.



true status until after he had returned from his last deployment, got out of the Army, and commenced separation proceedings from his wife. They informally agreed that she would keep the residence, the car, and a boat, and decided to reside apart. There was a dispute over the custody of their daughter, and that dispute made the financial situation even worse because of her subsequent actions. After an additional period of separation, they returned to court and Applicant was ordered to pay his wife \$1,400 per month as post-separation support, as well as to pay her attorney \$1,725.<sup>55</sup> His wife was ordered to make the monthly payments on the home mortgage (\$724) on the house in which she continued to reside and automobile (\$600) that she continued to drive.<sup>56</sup>

Despite hiring an attorney to represent his interests pertaining to the separation and eventual divorce, and the court order directing that Applicant's wife be financially responsible for the house and car, nothing changed. His wife refused to make the necessary monthly payments for the mortgage or the car, and Applicant spent over \$28,000 on his attorney, "and at the end of the day [he] was sitting at day one, nothing changed."<sup>57</sup> His wife abandoned the home in December 2010 without notifying him.<sup>58</sup> Within a couple of months, foreclosure proceedings related to the house, and repossession proceedings related to the car, commenced.<sup>59</sup> Applicant never received any collection notices, and believed they were sent to his wife.<sup>60</sup> As a result of the final divorce decree, in March 2013, Applicant was ordered to pay \$600 child support per month, effective April 1, 2013; to maintain health insurance coverage for his daughter, and pay two-thirds of any uncovered expenses; to pay alimony arrearages of \$14,050 at the rate of \$100 per month, commencing April 1, 2013; to pay \$10,000 attorney fees at the rate of \$100 per month, commencing April 1, 2013; and to pay his daughter's private school tuition.<sup>61</sup> Applicant had been giving his wife \$300 cash and paying for his daughter's healthcare, lunch, clothing, and tuition, but the Department of Social Services told him he could not receive credit for those partial payments, and he was required to pay his wife the full \$600 per month.<sup>62</sup>

On February 22, 2013, approximately three months before the SOR was issued, Applicant enrolled in a debt settlement plan to have the company negotiate with his creditors for less-than-full repayment of his debts, to furnish Applicant financial guidance, and to resolve his delinquent accounts.<sup>63</sup> Three accounts were included in the

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<sup>55</sup> AE AH, *supra* note 12, at 6.

<sup>56</sup> AE AH, *supra* note 12, at 4.

<sup>57</sup> Tr. at 98.

<sup>58</sup> GE 3, *supra* note 25, at 9.

<sup>59</sup> AE AO, *supra* note 33, at 1; Tr. at 98.

<sup>60</sup> GE 3, *supra* note 25, at 9.

<sup>61</sup> GE 2 (Memorandum of Judgment/Order, dated March 20, 2013); Tr. at 99-104.

<sup>62</sup> Tr. at 102-103.

<sup>63</sup> GE 2 (Client Agreement, dated February 22, 2013).

initial debt schedule, and Applicant was to make a total monthly payment of \$431, commencing March 6, 2013.<sup>64</sup> That effort ceased because he felt it would simply take too long to resolve the debts, and Applicant has not commenced making any payments under that plan.<sup>65</sup> Applicant sought additional financial counseling from a variety of sources in order to determine his best possible options.<sup>66</sup> He also enrolled in the financial readiness program at his local military facility, and was scheduled to take classes in personal financial management, budgeting, and debt management.<sup>67</sup> He was advised by the financial readiness program specialist that, based on his current debt and available income, Chapter 13 bankruptcy might be his best strategy.<sup>68</sup> He engaged the professional services of a bankruptcy attorney, and as soon as he completes paying the attorney the required \$815, covering attorney fees, filing fee, and credit counseling class (which he already completed), he expects to file for bankruptcy and dispute one account.<sup>69</sup> Applicant has contacted nearly all of his creditors, and has already paid off or otherwise resolved some accounts, including non-SOR accounts, or entered into repayment arrangements and is making scheduled payments on other accounts. He is disputing one account.

In February 2013, in conjunction with his aborted debt settlement plan, Applicant established a personal financial summary reflecting a total income of \$4,000; and monthly expenses of \$3,523; leaving a monthly disposable income of \$477.<sup>70</sup> In March 2013, Applicant provided a personal financial statement reflecting his current financial information. It depicted a monthly net income of \$4,308.20; monthly household, transportation, food expenses, child support, and tuition payments of \$1,909.96; and monthly debt payments of \$1,675; leaving a monthly remainder of \$723.24 available for discretionary savings or expenditures.<sup>71</sup> Applicant's rent and utilities are paid by his girlfriend.<sup>72</sup> In January 2014, Applicant provided a revised personal financial statement reflecting his current financial information. It depicted a monthly net income of \$3,660; monthly household, utility, transportation, food expenses, and child support payments of

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<sup>64</sup> GE 2 (Debt Schedule, dated February 22, 2013).

<sup>65</sup> Tr. at 129-131, 133.

<sup>66</sup> AE AO, *supra* note 33, at 1; AE AI (Internet Credit Counseling, undated); AE AG (Follow-Up Bankruptcy Appointment Packet, undated).

<sup>67</sup> AE AO, *supra* note 33, at 1.

<sup>68</sup> AE AL (Memorandum, undated).

<sup>69</sup> AE AG, *supra* note 65.

<sup>70</sup> AE F (Personal Financial Summary, dated February 22, 2013).

<sup>71</sup> GE 2 (Personal Financial Statement, undated).

<sup>72</sup> GE 2, *supra* note 4, at 10.

\$2,270; and monthly debt payments of \$1,110; leaving a monthly remainder of \$280 available for discretionary savings or expenditures.<sup>73</sup>

The SOR identified nine purportedly continuing delinquencies. Among those accounts are the following:

There is a secured loan account for a boat with a high credit of \$19,731 that was opened in 2007, for which Applicant was paying \$320 per month until sometime in 2008. Because of the separation and divorce activity, he was unable to continue paying on the account and it became delinquent. Applicant advised the bank of his situation, but Applicant's wife had possession of the boat, and without Applicant's knowledge or approval, she told the bank to repossess the boat.<sup>74</sup> It was repossessed in May 2010, and \$18,257 was charged off in June 2010. The boat was auctioned off by the bank and sold for \$16,000 to the marina where it was being stored.<sup>75</sup> Although Applicant had made some unspecified lump sum payments on the account, and contended the balance should be somewhere around \$10,590, as of May 2012, the unpaid balance was listed as \$16,943, and as of January 2013, that balance had increased to \$17,996 (**SOR ¶ 3.a.**)<sup>76</sup> Applicant received no credit from the bank with regard to what it received through the auction, and his efforts, to date, to resolve that issue have been unsuccessful.<sup>77</sup> In June 2012, Applicant indicated he would resolve the account by January 2013.<sup>78</sup> In June 2013, he claimed to be working on a repayment plan, but there is no evidence that any such plan was commenced.<sup>79</sup> Applicant now intends to have his attorney dispute the account and obtain satisfaction regarding the sale of the boat. However, until he does so formally, and submits documentation in support of his dispute, the account has not been resolved.

There is a credit card account with a credit limit of \$6,000 and past-due balance of \$231 that was placed for collection and, in November 2012, charged off in the amount of \$8,212 (**SOR ¶ 2.b.**)<sup>80</sup> In August 2011, Applicant and the collection agent agreed to a repayment plan, and since that time, he has been making monthly payments of \$235.<sup>81</sup> In light of his continuing payments, the account was transferred

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<sup>73</sup> AE AK (Personal Financial Statement, undated).

<sup>74</sup> GE 3, *supra* note 25, at 10; Tr. at 116-118.

<sup>75</sup> Tr. at 111-112.

<sup>76</sup> GE 3, *supra* note 25, at 10; AE H (Experian Credit Report, dated March 17, 2013), at 2-3; GE 6 (Equifax Credit Report, dated March 5, 2013), at 2.

<sup>77</sup> Tr. at 112-115.

<sup>78</sup> GE 3, *supra* note 25, at 10.

<sup>79</sup> Applicant's Answer to the SOR, at 3.

<sup>80</sup> GE 6, *supra* note 76, at 2; AE H, *supra* note 76, at 3-4.

<sup>81</sup> AE G (Account History, dated March 17, 2013); GE 2 (Account History, dated March 26, 2013); GE 2 (Letter, dated August 5, 2011); Tr. at 145-147.

back to the original creditor from the collection agent. The account was also to be included in his initial, but cancelled, debt schedule. The account is in the process of being resolved.

There is an automobile loan account with a credit limit of \$32,493 that was placed for collection and, in August 2010, charged off in the amount of \$18,933 (**SOR ¶ 3.c.**).<sup>82</sup> Applicant contended it was a used car loan opened in February 2006 in the amount of about \$8,000, and that he made monthly payments of \$525 from February 2006 until March 2008.<sup>83</sup> The court had ordered him to pay his wife \$1,400 per month as post-separation support, and she was ordered to make the monthly payments on the automobile (\$600). She continued to drive the vehicle, but failed or refused to make the payments. The account became delinquent and Applicant was being overwhelmed with collection notices, so he hired a private investigator to locate the vehicle. It was in the possession of his wife's new boyfriend. Applicant had the vehicle voluntarily repossessed and returned to the dealer.<sup>84</sup> It was sold at auction, and the dealer initially wanted about \$18,000, but eventually reduced the outstanding balance to \$6,333.<sup>85</sup> Applicant contended he made a lump sum payment of \$1,500 in 2010, but failed to submit any documentation to support his contention, and intended to resolve the account by January 2013.<sup>86</sup> The account was also to be included in his initial, but cancelled, debt schedule, but as of December 2013, he is merely negotiating but not paying anything.<sup>87</sup> The account has not been resolved.

There is a credit card account with a credit limit of \$3,900, a high balance of \$4,578, and past-due balance of \$1,330, that was placed for collection and, in March 2010, charged off in the amount of \$4,379 (**SOR ¶ 3.d.**).<sup>88</sup> The account was subsequently sold to a debt purchaser,<sup>89</sup> and the remaining balance is listed as \$4,381.<sup>90</sup> The account is the same account as that alleged in **SOR ¶ 3.f.** Applicant contended that, without his knowledge, but using his power of attorney, his wife took out a home equity line of credit.<sup>91</sup> In July 2012, Applicant intended to resolve the account by January 2013,<sup>92</sup> but as of December 2013, there is no evidence of any repayment plan

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<sup>82</sup> GE 6, *supra* note 76, at 3; AE H, *supra* note 76, at 4-5.

<sup>83</sup> GE 3, *supra* note 25, at 10.

<sup>84</sup> GE 3, *supra* note 25, at 11; Tr. at 148-154.

<sup>85</sup> GE 3, *supra* note 25, at 11; GE 6, *supra* note 76, at 3; Tr. at 152.

<sup>86</sup> GE 3, *supra* note 25, at 11; Tr. at 153.

<sup>87</sup> Tr. at 153.

<sup>88</sup> GE 6, *supra* note 76, at 2; AE H, *supra* note 76, at 10.

<sup>89</sup> AE H, *supra* note 76, at 10.

<sup>90</sup> GE 6, *supra* note 76, at 2; AE H, *supra* note 76, at 8.

<sup>91</sup> Tr. at 157-158.

<sup>92</sup> GE 3, *supra* note 25, at 8; Tr. at 153.

or payments made on the account. In June 2013, Applicant stated that the “card was the result of marital debt and until only recently was a judgment made on the responsible payer.”<sup>93</sup> It remains unclear as to what Applicant was saying. The account has not been resolved.

There is an unspecified type of account with a credit limit of \$10,372 and past-due \$10,627 that was placed for collection in May 2011. The account was transferred or sold to another debt collection agent. The unpaid balance in November 2012 was \$12,914, and by February 2013, it had increased to \$13,296 (**SOR ¶ 3.e.**)<sup>94</sup> Applicant was unsure as to identity of the original creditor, and at one point stated it was the same company to which his auto loan was sold, as discussed above pertaining to (**SOR ¶ 3.c.**)<sup>95</sup> At another point, he said it was the same account referred to in (**SOR ¶ 3.b.**)<sup>96</sup> Applicant had never received documentation regarding the account, so he requested them from the creditor, only to be told it would cost \$2,200 to obtain the past statements.<sup>97</sup> The account was to be included in his initial, but cancelled, debt schedule. In June 2013, Applicant stated the account was in a repayment plan,<sup>98</sup> and during the hearing he contended the balance had been reduced to about \$8,000.<sup>99</sup> In the absence of any documentation to confirm any aspect of Applicant’s contentions, I conclude that the account has not been resolved.

There is a home mortgage account with a credit limit of \$109,950, an unpaid balance of \$97,156, and past-due balance of \$26,989, for which foreclosure proceedings commenced in February 2013 (**SOR ¶ 3.g.**)<sup>100</sup> The court had ordered him to pay his wife \$1,400 per month as post-separation support, and she was ordered to make the monthly payments on the mortgage (\$724) on the house in which she continued to reside. His wife refused to make the necessary monthly payments for the mortgage and she eventually abandoned the home in December 2010 without notifying Applicant. Within a couple of months, foreclosure proceedings related to the house commenced, but Applicant never received any collection notices, and believed they were sent to his wife. Once he learned of the foreclosure activities, Applicant approached the creditor, and on February 12, 2013, they entered into a loan modification agreement.<sup>101</sup> Applicant’s monthly mortgage payment is \$726, and with a

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<sup>93</sup> Applicant’s Answer to the SOR, at 2.

<sup>94</sup> GE 6, *supra* note 76, at 1; AE H, *supra* note 76, at 8.

<sup>95</sup> Tr. at 154.

<sup>96</sup> GE 3, *supra* note 25, at 9; Tr. at 160-161.

<sup>97</sup> Tr. at 161.

<sup>98</sup> Applicant’s Answer to the SOR, at 2.

<sup>99</sup> Tr. at 161-162.

<sup>100</sup> AE H, *supra* note 76, at 9.

<sup>101</sup> AE A (Loan Modification, dated March 14, 2013); GE 2 (Loan Modification, dated March 14, 2013). The two documents are identical, and the one attached as part of GE 2 was furnished to the DOD CAF in March 2013, two months before the SOR was issued.

renter paying him \$950 per month, he has a positive balance.<sup>102</sup> The mortgage is currently in good standing.<sup>103</sup> The account has been resolved.

Applicant initially said that at some unspecified point, he received what he believed was a \$20,000 bonus from his state National Guard for six years of service. When he transferred his guard affiliation from one state to another, it was apparently determined that he had been overpaid.<sup>104</sup> Another version of the same story was that he received a check for \$5,998.<sup>105</sup> Regardless of the amount received, Applicant spent the funds,<sup>106</sup> but did not explain how he did so. In July 2012, Applicant indicated that the entire issue was caused by an administrative error, and that he was working on getting it resolved within the next several months.<sup>107</sup> He failed to do so. In October 2012, the collection agent indicated the debt balance was \$7,660.21, and offered Applicant several repayment options, among which were wage garnishment, payment in full, and a repayment plan.<sup>108</sup> Applicant contended that he entered into a repayment plan about three months before the SOR was issued,<sup>109</sup> and that he had been making monthly payments of \$110 by automatic debit.<sup>110</sup> He now contends that he has increased his monthly payments to \$175.<sup>111</sup> Applicant's credit report lists the original account amount as \$6,348,<sup>112</sup> and reflects a number of payments.<sup>113</sup> The balance as of February 2013, was \$5,984 (**SOR ¶ 3.h.**)<sup>114</sup> While Applicant has failed to submit documentation indicating more recent payments, it appears that the account is in the process of being resolved.

During the period of his separation, Applicant's wife refused to sign his joint state and federal income tax returns and he was required to file as an individual. Because he did not have sufficient funds to make his entire payments, he had unpaid balances for

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<sup>102</sup> Tr. at 165-166.

<sup>103</sup> AE AL, *supra* note 68; Tr. at 165.

<sup>104</sup> GE 3, *supra* note 25, at 11.

<sup>105</sup> Tr. at 167.

<sup>106</sup> Tr. at 167.

<sup>107</sup> GE 3, *supra* note 25, at 11.

<sup>108</sup> GE 2 (Notice of Federal Agency's Intent to Initiate Administrative Wage Garnishment Proceedings, dated October 24, 2012).

<sup>109</sup> Applicant's Answer to the SOR, at 3.

<sup>110</sup> Tr. at 167.

<sup>111</sup> AE AL, *supra* note 68.

<sup>112</sup> GE 6, *supra* note 76, at 3; AE H, *supra* note 76, at 6.

<sup>113</sup> AE H, *supra* note 76, at 6-7.

<sup>114</sup> AE H, *supra* note 76, at 6-7.

the tax years 2009 and 2011, totaling \$44,086 (**SOR ¶ 3.i.**)<sup>115</sup> Applicant's wages were apparently garnished, in the amount of \$211 two times per month, commencing in April 2010.<sup>116</sup> However, with a desire to resolve the account much quicker, in January 2013, three months before the SOR was issued, Applicant and the Internal Revenue Service (IRS) entered into an installment agreement under which Applicant agreed to pay the IRS \$700 each month.<sup>117</sup> The payment is automatically deducted by the IRS from Applicant's account.<sup>118</sup> Copies of the Installment Agreement and account history reflecting payments were furnished to the DOD CAF in March 2013. The account is in the process of being resolved.

## Character References

Applicant's professional colleagues and friends were effusive with praise for Applicant's efforts and activities. He has been described as a highly professional, honest, honorable, trustworthy individual who has consistently demonstrated sound judgment, a high degree of professionalism and security awareness, a passion for the people around him, and an uncommon drive for excellence. He is a grounded, straight shooter who always conducts himself with discretion, maturity, with empathy, and kindness. He is also a dedicated provider and an excellent father.<sup>119</sup>

## Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance."<sup>120</sup> 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. The President has authorized the Secretary of Defense or his designee to grant an applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."<sup>121</sup>

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief

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<sup>115</sup> GE 3, *supra* note 25, at 12; AE AL, *supra* note 68.

<sup>116</sup> GE 3, *supra* note 25, at 12; GE 2 (Account History, dated March 17, 2013); Tr. at 168-169.

<sup>117</sup> GE 2 (Installment Agreement, dated January 3, 2013).

<sup>118</sup> AE B (Letter, dated February 20, 2013); Tr. at 170.

<sup>119</sup> AE AB (Character Reference, undated); AE AC (Character Reference, undated); AE AD (Character Reference, dated December 29, 2013); AE AE (Character Reference, undated); AE AF (Character Reference, dated January 2, 2013).

<sup>120</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>121</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. 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 meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."<sup>122</sup> The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.<sup>123</sup>

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials."<sup>124</sup>

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."<sup>125</sup> Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole

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<sup>122</sup> "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>123</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>124</sup> *Egan*, 484 U.S. at 531

<sup>125</sup> See Exec. Or. 10865 § 7.



or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It 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. In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

## **Guideline H, Drug Involvement**

The security concern relating to the guideline for Drug Involvement is set out in AG ¶ 24:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

(a) Drugs are defined as mood and behavior altering substances, and include:

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and

(2) inhalants and other similar substances;

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 25(a), *any drug abuse (see above definition)*, is potentially disqualifying. Similarly, under AG ¶ 25(g), *any illegal drug use after being granted a security clearance*, may raise security concerns. In an effort to relieve his stress and pain, as well as to enable him to sleep, Applicant started to self-medicate, in part, using marijuana, to do so. During the relatively brief period from May 2011 until July 2011, long after he had been granted a security clearance, Applicant smoked one marijuana "joint" per week in an effort to reduce his stress, manage his pain, and enable him to sleep. Applicant's abuse of marijuana never resulted in any arrests. Nor was he ever evaluated or diagnosed with marijuana abuse or dependence by a licensed clinical social worker or duly qualified medical professional. AG ¶¶ 25(a) and 25(c) have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from drug involvement. Under AG ¶ 26(a), the disqualifying conditions may be mitigated where *the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*. Under AG ¶ 26(b),

drug involvement concerns may also be mitigated where there is a *demonstrated intent not to abuse any drugs in the future, such as:*

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

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

*(3) an appropriate period of abstinence;*

*(4) a signed statement of intent with automatic revocation of clearance for any violation.*

In addition, AG ¶ 26(d) may apply where there is *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.*

AG ¶¶ 26(a) and 26(b) apply, and 26(d) partially applies. Applicant's use of marijuana to relieve his stress and pain associated with his PTSD and TBI, as well as to enable him to sleep, during the relatively brief period from May 2011 until July 2011, ceased well before the SOR was issued in May 2013. As of the December 2013 hearing, he had been abstinent for over two and one-half years, and it has not recurred. The eventual cumulative success of his various treatment programs which addressed his PTSD and TBI, as well as his ancillary issues, his new understanding and outlook regarding PTSD and TBI, along with his continuing active and frequent participation in related programs, his period of sustained abstinence from marijuana, his disassociation from all drug-using individuals, his avoidance of the environments where drugs were used, and his stated intent to never use marijuana again, reflect Applicant's substantial efforts to demonstrate an intention not to abuse any drugs in the future. Applicant's drug abuse is unlikely to continue or recur, and no longer casts doubt on Applicant's reliability, trustworthiness, or good judgment.

### **Guideline G, Alcohol Consumption**

The security concern relating to the guideline for Alcohol Consumption is set out in AG ¶ 21:

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

The guideline notes several conditions that could raise security concerns. 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 whether the individual is diagnosed as an alcohol abuser or alcohol dependent* is potentially disqualifying. In addition, *habitual or binge consumption*

*of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent, may apply under AG ¶ 22(c).* .

AG ¶¶ 22(a) and 22(c) have been established by Applicant's three alcohol-related incidents involving the police and judicial authorities, and because he repeatedly consumed alcohol to the point of impaired judgment or intoxication. There was a point in his life when Applicant was, by his own description, "young and stupid." He was charged with DWI on three occasions, and during two of those incidents, he refused to take a breathalyzer test. Police and judicial intervention proved useless until shortly after his most recent incident, when he finally sought assistance from the DVA and enrolled in CARP and associated programs.

The guidelines also include examples of conditions that could mitigate security concerns arising from alcohol consumption. Under AG ¶ 23(a), the disqualifying condition may be mitigated where *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 good judgment.* Similarly, when *the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser),* AG ¶ 23(b) may apply. In addition, AG ¶ 23(d) may apply if:

The individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

AG ¶¶ 23(a), 23(b), and 23(d) apply. For a number of years, Applicant simply ignored his alcohol problems. He was a hard-drinking special operations combat soldier. Two of the alcohol-related incidents occurred shortly after he had returned from deployments. He consumed alcohol with friends for social reasons as well as to self-medicate to relieve his stress and pain associated with his PTSD and TBI, as well as to enable him to sleep. In May 2011, shortly after his third DWI, Applicant sought help and was enrolled in CARP. He completed a 7-day in-patient alcohol therapy and then completed an intensive out-patient therapy program. In February 2012, he completed 90 hours (twice a week for nine months) of substance abuse disorder specific treatment at the DAV clinic. He completed exposure therapy for PTSD (three to four days per week for 16 weeks) and the Seeking Safety program (three to four days per week for 16 weeks), and is currently in the trauma recovery program. There is no evidence that Applicant was ever diagnosed with alcohol abuse or alcohol dependence.

Applicant soon realized that "things started to make some sense." So, finally recognizing the negative impact alcohol was having on his life, Applicant used the

coping tools and skills he had learned in his various therapy programs, and decided to stop consuming alcohol. He completely changed his life related to alcohol and has a happy relationship with his girlfriend and his daughter. He stopped drinking, pushed away from all of those old relationships, and severed ties with a lot of the work hard, play hard, community. Applicant has been abstinent since June 2011, and has no desire, even on his worst day, to consume alcohol.

Applicant has been consistently candid about the significance of alcohol in his life. He was forthright in his estimations about the frequency and quantity of his alcohol consumption, and has not attempted to minimize his problem. Applicant was, at times, initially unwilling or unable to curtail his alcohol consumption, but now he is able to do so. His abstinence since June 2011 is accompanied by the abstinence from marijuana as well as his new conviction and intention to remain abstinent from all the substances with which he had problems. Applicant's abstinence is viewed favorably, and he should be encouraged to continue it. Applicant has furnished substantial evidence of positive actions taken to overcome his alcohol problem, and has established a pattern of abstinence that enables me to conclude that his alcohol problem has been put behind him and will not recur.

#### **Guideline F, Financial Considerations**

The security concern relating to the guideline for Financial Considerations 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. . . .

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an *inability or unwillingness to satisfy debts* is potentially disqualifying. Similarly, under AG ¶ 19(c), a *history of not meeting financial obligations* may raise security concerns. In addition, under AG ¶ 19(g), *failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same* is potentially disqualifying. At about the time Applicant returned from his last deployment, got out of the Army, and commenced separation proceedings from his wife, Applicant's finances seemed to deteriorate, or at least their delinquent status started coming to his attention. He was experiencing some financial difficulties over the next few years, and those difficulties increased to the point where he was unable to make routine monthly payments for a number of accounts. Accounts eventually started becoming delinquent and were placed for collection. He had insufficient funds to pay his income tax, and his wages were subsequently garnished. AG ¶¶ 19(a) and 19(c) apply, and 19(g) partially applies.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where *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.* Also, under AG ¶ 20(b), financial security concerns may be mitigated where *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, or a death, divorce or separation), and the individual acted responsibly under the circumstances.* Evidence that *the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control* is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*<sup>126</sup> In addition, if *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 to resolve the issue,* AG ¶ 20(e) may apply.

AG ¶¶ 20(b), 20(c), and 20(d) apply, and AG 20(a) and 20(e) partially apply. The nature, frequency, and relative recency of Applicant's financial difficulties since about 2009 make it difficult to conclude that it occurred "so long ago" or "was so infrequent." Applicant's financial problems were not caused by frivolous or irresponsible spending on his part, and he did not spend beyond his means. Instead, his financial problems were largely beyond Applicant's control. Following military protocol, Applicant gave his wife a power of attorney and he deployed on four occasions. She was expected to manage the family finances while he was away. Instead, she opened new accounts and failed to pay the incoming bills. Applicant was initially ordered to pay his wife \$1,400 per month as post-separation support, as well as to pay her attorney \$1,725. His wife was ordered to make the monthly payments on the home mortgage on the house in which she continued to reside and automobile that she continued to drive. She failed or refused to do so. She abandoned the home without notifying him, and loaned the vehicle to her new boyfriend. Applicant never received any collection notices. The house went into the foreclosure process and the vehicle was repossessed. His wife refused to sign his income tax returns so he could file joint returns, and he was forced to file as an individual.

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<sup>126</sup> The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the "good-faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

Applicant searched around for guidance. His divorce lawyer proved to be a disaster in failing to obtain an equitable distribution of assets and liabilities. Applicant and his wife are now divorced, and he no longer needs to rely on her to manage the family finances. In addition, she no longer has his power of attorney, and cannot open new accounts or ignore required monthly payments on his accounts. Applicant enrolled in a debt settlement plan in an effort to have the company negotiate with his creditors, furnish him with financial guidance, and resolve his delinquent accounts. The plan was aborted. He then sought financial counseling from other sources. After discussing his options with another attorney, it was determined that his best option is to file for bankruptcy under Chapter 13. He is in the process of doing so. Nevertheless, Applicant acted responsibly by addressing his delinquent accounts.<sup>127</sup> He resolved various non-SOR accounts, and entered into repayment plans with several creditors. He has been making his agreed monthly payments on a credit card account, his military overpayment, and his IRS delinquency. He was able to withdraw his mortgage from the foreclosure process, and after entering a loan-modification agreement, that mortgage is now current. There are two accounts which are the subjects of dispute, and they refer to the boat and the vehicle. Applicant's wife was ordered to make payments, but she did not. Both items were sold at auction, but the creditors have seemingly failed to credit Applicant with what they received from those sales. It is unclear if the few remaining are being resolved, or will be resolved under the Chapter 13 bankruptcy, for while Applicant had indicated certain actions taken with regard to those accounts, he also failed to submit documentation to support his contentions. Applicant no longer has any other delinquent debts. There are clear indications that Applicant's financial problems are under control. Applicant's actions under the circumstances confronting him do not cast doubt on his current reliability, trustworthiness, or good judgment.<sup>128</sup>

### **Whole-Person Concept**

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

- (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

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<sup>127</sup> "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

<sup>128</sup> See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

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. I have incorporated my comments under Guidelines H, G, and F, in my analysis below.

There is some evidence against mitigating Applicant's conduct. There was a point in his life when he was "young and stupid." He used marijuana while holding a security clearance. His involvement with alcohol led him into situations where he consumed too much alcohol, and found himself with three DWIs. Applicant has a history of financial delinquencies commencing in about 2009. He permitted accounts to become delinquent and placed for collection or charged off. He lost a vehicle and a boat to repossession and auction-sale, and nearly lost his home to foreclosure.

The mitigating evidence under the whole-person concept is substantial. A highly decorated combat veteran, Applicant was deployed on four occasions, including deployments to Haiti, Egypt, and twice to Afghanistan. He was awarded the Silver Star for gallantry in action during a combined joint special operation in Afghanistan, the Bronze Star Medal (two awards), and the Purple Heart. He is afflicted with PTSD and TBI. Applicant's use of marijuana to relieve his stress and pain associated with his PTSD and TBI, as well as to enable him to sleep, during the relatively brief period from May 2011 until July 2011, ceased well before the SOR was issued in May 2013. As of the December 2013 hearing, he had been abstinent for both marijuana and alcohol for over two and one-half years, and his use of those substances has not recurred. The eventual cumulative success of his various treatment programs which addressed his PTSD and TBI, as well as his ancillary issues, his new understanding and outlook regarding PTSD and TBI, along with his continuing active and frequent participation in related programs, his period of sustained abstinence from alcohol and marijuana, his disassociation from all drug-using individuals, his avoidance of the environments where drugs were used, and his stated intent to never use alcohol or marijuana again, reflect Applicant's substantial efforts to demonstrate an intention not to abuse any alcohol or drugs in the future.

Applicant's financial delinquencies were the unfortunate consequence of his wife's actions under the authority of his power of attorney, as well as her actions of ignoring a court mandate and refusing to pay certain bills. Nevertheless, Applicant addressed the situation and attempted to resolve his delinquent accounts. He did not turn his back on his creditors. Instead, he has paid off or settled, or otherwise resolved accounts with several creditors, including his non-SOR creditors, and is currently active with repayment plans for several remaining creditors. Applicant's actions under the circumstances confronting him do not cast doubt on his current reliability, trustworthiness, or good judgment.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:<sup>129</sup>

In evaluating Guideline F cases, the Board has previously noted that the concept of “‘meaningful track record’ necessarily includes evidence of actual debt reduction through payment of debts.” However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has “. . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan.” The Judge can reasonably consider the entirety of an applicant’s financial situation and his [or her] actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.<sup>130</sup> Applicant has demonstrated a “meaningful track record” of debt reduction and elimination. He has made some significant timely efforts to resolve his accounts. Overall, the record evidence leaves me without questions and doubts as to Applicant’s eligibility and suitability for a security clearance. Nevertheless, this decision should serve as a warning that his failure to continue his abstinence from alcohol and drugs, or his failure to resolve his financial delinquencies, or the creation of new delinquent accounts, will adversely affect his future eligibility for a security clearance.<sup>131</sup> After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude he has mitigated the drug involvement, alcohol consumption, and financial conditions security concerns. See AG ¶¶ 2(a)(1) - 2(a)(9).

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and

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<sup>129</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

<sup>130</sup> See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

<sup>131</sup> While this decision should serve as a warning to Applicant, the decision, including the warning, should not be interpreted as being contingent on future monitoring of Applicant’s drug and alcohol abstinence, or his continuing efforts to resolve his financial delinquencies, or the creation of new delinquencies. The Defense Office of Hearings and Appeals (DOHA) has no authority to attach conditions to an applicant’s security clearance. See, e.g., ISCR Case No. 06-26686 at 2 (App. Bd. Mar. 21, 2008); ISCR Case No. 04-04302 at 5 (App. Bd. Jun. 30, 2005); ISCR Case No. 03-17410 at 4 (App. Bd. Apr. 12, 2005); ISCR Case No. 99-0109 at 2 (App. Bd. Mar. 1, 2000).



supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has mitigated and overcome the Government's case. For the reasons stated, I conclude he is eligible for access to classified information.

### **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 H:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Paragraph 3, Guideline F:	FOR APPLICANT
Subparagraph 3.a:	For Applicant
Subparagraph 3.b:	For Applicant
Subparagraph 3.c:	For Applicant
Subparagraph 3.d:	For Applicant
Subparagraph 3.e:	For Applicant
Subparagraph 3.f:	For Applicant (Same as 3.d.)
Subparagraph 3.g:	For Applicant
Subparagraph 3.h:	For Applicant
Subparagraph 3.i:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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ROBERT ROBINSON GALES  
Administrative Judge