DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 14-04719
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: John Adamson, Personal Representative

01/21/2016

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Decision

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant did not timely file his federal income tax returns for tax years 2010 through 2013 or his state income tax returns for tax years 2008 through 2013. He owes approximately $3,000 in past-due federal taxes for 2011 and more than $10,000 in delinquent state taxes. Past-due consumer credit balances totaling $7,955 from 2009 have not been paid. Applicant relapsed into drinking from March or April 2014 to October 2014 after treatment for alcohol dependence in June 2013. Clearance is denied.

Statement of the Case

On February 13, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, Financial Considerations, and Guideline G, Alcohol Consumption, and explaining why it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6,

Defense Industrial Personnel Security Clearance Review Program (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

On May 7, 2015, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On July 21, 2015, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for him. On July 23, 2015, I scheduled a hearing for August 17, 2015.

I convened the hearing as scheduled. Before the introduction of any evidence, Applicant's personal representative requested a continuance because the investigator who conducted Applicant's background investigation was not available to testify about what favorable information he or she garnered about Applicant. I denied the request in that Applicant had adequate notice of the hearing, had not filed a request before the hearing for the investigator's presence, and had not shown good cause for why he could not establish his case without the investigator's testimony. I advised Applicant that I would hold the record open for post-hearing submissions, including work and character reference information favorable to him. Twelve Government exhibits (GEs 1-12) were then admitted into evidence, GE 7 (his February 2014 credit report) over Applicant's objection. Applicant objected on the basis that his credit report of June 2015 (GE 12) reflected more current financial information. I admitted the February 2014 credit report because Applicant's credit history is relevant to an assessment of the Guideline F security concerns. Thirteen Applicant exhibits (AEs A-M) were admitted into evidence at the hearing without objection. Applicant also testified, as reflected in a transcript (Tr.) received on August 25, 2015.

I held the record open for four weeks after the hearing for post-hearing documentation from Applicant. On September 21, 2015, Applicant submitted AE N, which was admitted into evidence. Department Counsel filed no objection by the October 5, 2015 deadline for comment.

Summary of SOR Allegations

The SOR alleges under Guideline F that as of February 13, 2015, Applicant had not filed his federal income tax returns for tax years 2010 through 2013 (SOR ¶¶ 1.a-1.d) or his state income tax returns for tax years 2008 through 2013 (SOR ¶¶ 1.e-1.j). Additionally, he allegedly owed a $323 collection debt (SOR ¶ 1.k) and charged-off debts of $377 (SOR ¶ 1.l) and $11,762 (SOR ¶ 1.m). Under Guideline G, Applicant is alleged to have continued to consume alcohol after being diagnosed with alcohol dependence in June 2013 (SOR ¶ 2.a) and to have received alcohol detoxification treatment in May 2013 (SOR ¶ 2.b). Furthermore, Applicant allegedly pleaded nolo contendere to driving under the influence (DUI) in May 2009 (SOR ¶ 2.c); was convicted of driving while ability impaired in March 2007 (SOR ¶ 2.d); resigned from a job in December 2006 after being asked to submit to a blood test when suspected of intoxication (SOR ¶ 2.e); and while in the military, was reprimanded and required to attend an alcohol counseling program for drunken or reckless

driving and reckless endangerment in 2001 (SOR ¶ 2.f) and for drinking before duty in 1989 (SOR ¶ 2.g).

When he answered the SOR, Applicant admitted that he had not filed his federal or state income tax returns for the years alleged and that he owed the charged-off debt in SOR ¶ 1.m. He denied the debts alleged in SOR ¶¶ 1.k and 1.l. Concerning the Guideline G allegations, Applicant admitted the alcohol-related incidents in SOR ¶¶ 2.c-2.g, with the caveat that he had not been required to attend a 30-day alcohol counseling program in 2001. As he clarified at the hearing, the alcohol counseling was recommended not required. (Tr. 31.) Applicant denied that he had been hospitalized for alcohol detoxification around May 2013 (SOR ¶ 2.b). He also denied the alleged diagnosis of alcohol dependence in June 2013 with continued drinking after that diagnosis (SOR ¶ 2.a).

Findings of Fact

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 51-year-old high school graduate, who has worked full time as a rigger for a defense contractor since November 2007. Applicant served on active duty in the United States military from August 1982 through August 2002. (GEs 1-3; AE A.) He held a secret clearance for his military duties. Applicant did not need a security clearance for his jobs in the civilian sector before he began his present employment. (GE 1.)

Applicant was married to his first wife from 1983 to 1987 and to his second wife from April 1993 to October 2008. He and his second wife separated permanently in September 2007. (GE 2.) Applicant has two children: a son now age 32 and a daughter now age 18. (GEs 1, 2, 9.) Applicant had no contact with his son from 1990 until November 2013. (GE 9.)

Financial

Applicant retired from the U.S. military after 20 years with an honorable discharge, having received several service medals and five good conduct awards. (GE 3; AEs A-I, L; Tr. 78-79.) Applicant worked as a civilian equipment operator at a military base from January 2003 to April 2004, and then as a truck driver for some private companies. In May 2006, Applicant began working as an assistant operator for a healthcare company, but he quit in December 2006 after being asked to submit to a blood test. Applicant was unemployed from December 2006 until November 2007, when he began working for his present employer. (GEs 1, 2.)

On November 5, 2007, Applicant completed and certified to the accuracy of an Electronic Questionnaire for Investigations Processing (e-QIP) for a security clearance. He responded affirmatively to whether he had been over 180 days delinquent on any debt in the last seven years, and to whether he was currently over 90 days delinquent on any debt.

He disclosed one credit card debt of $1,000 from June 2007 that was pending resolution. (GE 2.)

A check of Applicant's credit on November 15, 2007, revealed that Applicant was 120 days past due in the amount of $2,125 on the credit card listed on his e-QIP. His account had a balance of $12,774 as of October 2007 and had been cancelled by the creditor. Applicant owed delinquent balances on four other credit card accounts. He was 90 days past due for $385 on a $5,233 account balance as of November 2007, 60 days late for $132 on an account balance of $3,357 as of October 2007, 30 days late on an account with a $436 balance, and over 120 days past due for $1,308 on a $11,471 balance as of November 2007 (SOR ¶ 1.m). (GE 8.)

Around July 2008, Applicant moved to his current residence, which was located in another state closer to his work. Applicant assumed that his employer automatically withheld taxes for his new state of residence, and he filed no paperwork to ensure that state taxes were properly withheld from his wages. Applicant testified that he realized his error some three years later, but he then made no effort to file for withholding or to submit his late returns.[1] (Tr. 143-144.)

Applicant completed another e-QIP on September 17, 2013. He responded "Yes" to whether he had failed to file or pay federal, state, or other taxes when required by law or ordinance within the last seven years. He indicated that he had not paid federal income tax debts of $1,000 for 2009, $1,000 for 2010, and $2,000 for 2011, but that all debts would be satisfied in full in September 2013. He also disclosed that he had not yet filed his federal income tax return for tax year 2012 because he did not receive a W-2. He was working to resolve the issue. In response to inquiries concerning delinquencies on routine accounts, Applicant indicated that credit card balances from January 2009 of $4,500 (not alleged) and $15,000 (SOR ¶ 1.m) had been placed for collection. He also related that he was behind 120 days on a disputed $10,000 hospital debt in that it should have been covered by medical insurance. He explained that he was resubmitting his claim to his insurer. (GE 1.)

On December 12, 2013, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). Applicant indicated that he did not file his tax returns for 2009 or 2010 because he did not receive the proper forms. He was on temporary duty for his employer for nine months. He added that any taxes owed for those years had been paid in full as of September 2013. Applicant admitted that he had yet to file his returns for tax years 2011 and 2012, again because he had not received his W-2 statements and needed Internal Revenue Service (IRS) forms. Applicant planned to "re-file" the returns and to pay any taxes owed. As for his delinquent consumer credit card accounts, Applicant stated that he was recently billed $1,500 on his military exchange credit card account. His effort to make a payment in person was unsuccessful because the debt was in collection and no longer in the creditor's system. Applicant claimed that he was

[1] According to Applicant, at some point after he moved, no state taxes were withheld from his pay for either his previous or current states of residency. He admitted that he did not file income tax returns to either state. (Tr. 142-144.) As of his hearing in August 2015, no state taxes were being withheld from his pay. (Tr. 144.)

making payments on the debt in SOR ¶ 1.m. As for the $10,000 hospital debt, he was awaiting a copy of his bill so that he could submit it to his secondary insurer. (GE 9.)

Applicant was re-interviewed by an OPM investigator on January 9, 2014. He indicated that he had established a payment plan to address the military exchange credit card account in collection (not alleged in SOR). (GE 10.) A check of Applicant's credit on February 27, 2014, revealed a $206 debt in collection since June 2010 (not alleged) and a $323 retail debt in collection since December 2009 (SOR ¶ 1.k). Additionally, the credit card account in SOR ¶ 1.m had been charged off for $11,762. Equifax was reporting a $7,632 balance on the account as of February 2014, but also no payments since June 2009. (GE 7.)

In May 2015, Applicant received the wage and earnings statements needed to file his delinquent tax returns. He explained the delay in receipt of needed income statements to an issue with the postal service and with the Defense Finance and Accounting Service (DFAS) sending his documents to a wrong address. (Tr. 73.) On June 8, 2015, Applicant paid the IRS $2,000 for tax year 2011 in response to a tax bill of $5,000 for that year. (AE M; Tr. 119, 123-124, 149.) As of August 17, 2015, Applicant had not filed any of his delinquent federal or state income tax returns because he lacked the funds to pay taxes owed. (Tr. 73, 119-121.) Applicant is looking for help from a professional because he does not understand all the issues with respect to filing his returns. (Tr. 122.)

No state taxes were being withheld from Applicant's income as of August 2015. (Tr. 144.) On September 2, 2015, Applicant submitted an employee withholding certificate to have state taxes plus an additional $5 per pay period withheld from his pay. (AE N.) Applicant believes that he owes more than $10,000 in past-due state taxes for tax years 2008 through 2013. (Tr. 125, 145.)

As of June 30, 2015, Equifax was reporting the $323 collection debt (SOR ¶ 1.k) as unpaid since February 2010 (SOR ¶ 1.k). Applicant may have paid the debt, but he cannot find any record confirming payment and does not remember paying the debt. (Tr. 75, 126.) Available credit information confirms that Applicant has been making payments since May 2013 to reduce the balance to $11,697 of a closed credit union account (not alleged). The monthly minimum payment is around $200. In April 2015, he paid off another account for less than its full balance. In March 2015, he paid off the $377 debt in SOR ¶ 1.l after it had been charged off. (GE 12; Tr. 76.) The debt in SOR ¶ 1.m had been dropped from his credit record (GE 12), although there is no evidence of payments. Applicant is still investigating who holds the debt since it has been transferred or sold to another collection agency. (Tr. 128.) Applicant is paying $300 a month on a signature loan with a credit union. (Tr. 149.)

Applicant's hourly wage with the defense contractor is currently $29.50. (Tr. 145.) His rent is $1,349 per month. (Tr. 148.) Since his divorce, he has been paying $600 a month in child support for his daughter, which is taken from his military retirement income. He continued to send his daughter $600 a month despite her emancipation because she plans to attend college in the fall of 2015. Applicant also covers his daughter's medical

insurance and survivor benefit from his military income. (Tr. 146-147.) Applicant does not manage his own finances from a household budget. He pays bills when they come in. He has not had any financial counseling apart from some conversations with family members. (Tr. 130-131.)

Alcohol

Applicant started drinking alcohol socially at age 21. (GE 9.) Applicant had some issues with alcohol while he was in the military. Around 1989, he was awarded non-judicial punishment in part for drinking before duty, albeit not to intoxication. (Tr. 95-96.) In 2000 or 2001, he consumed several beers while out at bars with other servicemen. He was stopped by local police, and after taking a breathalyzer, he was arrested for driving while intoxicated (DWI). The matter was referred to the military for disposition. Approximately two months later, he appeared before a non-judicial proceeding where he was found guilty. He was sentenced to a reduction in grade (suspended), to forfeiture of half his pay for two months, and to 45 days of restriction or extra duty. Applicant was also referred to an alcohol awareness program. (GEs 9, 11.) Applicant completed a 30-day program, which he found of little benefit to him, and he continued drinking in his previous pattern. (GE 9.)

Around December 2006, Applicant was suspected by his then employer of being intoxicated at work and asked to take a blood test. Applicant had consumed alcohol the previous evening, but he denies that he had consumed any alcohol before reporting for duty. Applicant resigned from his job out of anger while waiting for a taxi to drive him to the testing site. (GEs 3, 9; Tr. 96-97.)

In March 2007, Applicant drank to intoxication while visiting his sister. While driving home, he pulled off the travel lane because he realized he was too intoxicated to drive safely. The police found him in his vehicle and arrested him for DUI after he refused to submit to a sobriety test or a breathalyzer. In December 2007, Applicant was convicted of a reduced charge of driving while impaired and fined $300 plus $80 court costs. (GEs 2, 10, 11; Tr. 98-99.)

Applicant listed the then pending March 2007 DUI on his November 2007 e-QIP, and he discussed the incident with an OPM investigator on January 23, 2008. During that interview, Applicant volunteered that he had received 30 days of counseling following non-judicial punishment for a DWI in 2000 or 2001. Applicant admitted that he had continued to consume alcohol after the March 2007 DUI at the rate of two to twelve beers a week, mostly on the weekends. (GE 11.)

Applicant's drinking increased around the time of his divorce in the fall of 2008. (Tr. 94.) In late May 2009, Applicant was stopped by the police on suspicion of drunk driving. He had been drinking and refused to submit to field sobriety tests. He was charged with simple assault and with DUI/first offense. The assault charge for stumbling into a police officer was dismissed. (GE 6; Tr. 100.) Applicant pleaded nolo contendere to DUI. He was placed on probation for one year and ordered to perform 10 hours of community service, complete DWI school, and pay a $780.50 fine. In June 2009, there was a change in

disposition, and his case was transferred to the department of motor vehicles. His driver's license was suspended for three months. (GEs 6, 9; Tr. 99.) According to Applicant, he was contacted by a probation officer around late June 2009 and was told that the charges had been dropped. (GE 9.) However, available court records show that a bench warrant was issued in July 2009 and that Applicant still owed $780.50. (GE 6.)

Applicant stopped frequenting bars after his arrest in 2009, but he continued to consume beer and hard liquor in his home. (Tr. 102.) By May 2013, he was drinking an average of five to seven alcohol beverages every night, usually to intoxication. Recognizing that he needed help to overcome his alcohol problem, Applicant sought treatment from a physician affiliated with a military health clinic. (GE 3; Tr. 104-105.)

In late May 2013, Applicant underwent three days of alcohol detoxification before being treated for diagnosed alcohol dependence in a partial hospitalization program from June 4, 2013, to June 20, 2013. (GE 5; Tr. 91-92.) He participated in daily psycho-educational and psychotherapy groups focusing in part on relapse prevention coping skills. He attended 12-step groups, cognitive behavioral therapy, and anger management groups. He was open to attending Alcoholics Anonymous (AA) meetings, and in the opinion of a staff therapist, Applicant "put forth great effort and displayed leadership in group and individual therapy." Applicant maintained abstinence while in the program, confirmed by weekly random toxicology screens. Aftercare plans included attendance in an intensive outpatient program at the facility three nights a week starting immediately on discharge, medication management through his physician at the military health clinic, and participation in at least four or five AA meetings a week. (GE 4; Tr. 107-108.) Applicant requested the aftercare outpatient program. (Tr. 110.) He understood that he was an alcoholic, even though no one on staff told him that he had been diagnosed with alcohol dependence. (Tr. 108-109.)

Applicant returned to work following his discharge after being absent from May 29, 2013, to June 22, 2013, for his treatment. On June 26, 2013, his employer informed the DOD about his recent treatment "for excessive alcohol use," and his current attendance in an outpatient program and AA. (GE 5.) Applicant went to AA for about three months. (Tr. 111.) He stopped attending because he felt he could maintain sobriety on his own. (Tr. 111-112.)

On September 17, 2013, Applicant completed an e-QIP on which he disclosed his alcohol counseling while in the military in 2000; his alcohol treatment in June 2013; and his last arrest for DUI, which he indicated occurred in January 2008 [sic]. Applicant indicated that the charges from his latest arrest had been dropped. (GE 1.)

When interviewed by an authorized investigator for the OPM on December 12, 2013, Applicant explained that he voluntarily sought treatment in 2013 after discussing his declining health with a physician. He indicated that he had not been formally diagnosed with alcohol abuse or alcoholism. However, he had maintained sobriety since his treatment. (GE 9.)

On January 9, 2014, Applicant was re-interviewed by an OPM investigator about the fact that he had been issued a written warning from his employer for taking excessive sick leave before he entered alcohol treatment. He was also asked about his March 2007 arrest for DUI, which he had not reported on his September 2013 e-QIP due to oversight. (GE 10.)

After about nine months of sobriety, Applicant relapsed into drinking alcohol around March or April 2014. Applicant attributes his relapse to isolating himself and to family issues. His mother was not doing well and had to move in with his sister. (Tr. 134.) Concerning the extent of his alcohol consumption, Applicant testified, "Once you pick up that first drink, you're right back where you started, and that's the best way I can tell you." (Tr. 114.)

Applicant had his last drink around October 13, 2014.[2] He stopped drinking after he was asked by his employer to submit to a breathalyzer, which he refused on the basis of union guidelines. Applicant denies that he consumed alcohol within eight hours of when he reported to work on that occasion, but he admits that he had a serious drinking problem at that time. (Tr. 89-90, 101, 136-137.) Applicant was suspended from work following the incident. (Tr. 90.) He resumed his affiliation with AA, going to meetings daily and working the program. (Tr. 136-137.) Applicant obtained an AA sponsor around December 2014.(GE 3; Tr. 115, 135.)

As of August 2015, Applicant was committed to AA and to maintaining his sobriety. (Tr. 80.) He attends AA meetings on a daily basis for the most part. (Tr. 116.) He has two home groups, provides rides to others, makes coffee, and participates in speaking engagements. (Tr. 79.) He recently received an AA coin marking 10 months of abstinence. (Tr. 80.) His sponsor for the past eight months has three or four years of sobriety. (Tr. 136.) Applicant also has a temporary sponsor, who is helping him with step 4 of the AA program, which is making a moral inventory. (Tr. 116.) Applicant does not fear another relapse because he is "working the steps and [he is] doing the program." (Tr. 133.) Applicant has a close relationship with his family, which he finds helpful to his sobriety. He is actively involved in his daughter's life. He was estranged from his son for many years, but they are again in contact. (Tr. 80-81.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially

[2] Applicant indicated on December 31, 2014, that he last used alcohol on October 15, 2014. (GE 3.) At his hearing, he testified he consumed his last drink of alcohol a couple of days prior to October 15, 2014. (Tr. 114.)

disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

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

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

Analysis

Guideline F, Financial Considerations

The security concerns about financial considerations are set forth 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.

Applicant had not filed his federal income tax returns for tax years 2010 through 2013 (SOR ¶¶ 1.a-1.d) or his state income tax returns for tax years 2008 through 2013 (SOR ¶¶ 1.e-1.j) by the February 13, 2015 SOR. The record before me does not include any records from the IRS or the state showing the amount of tax delinquency. On his September 2013 e-QIP, Applicant estimated his IRS tax delinquency at $1,000 for 2009, $1,000 for 2010, and $2,000 for 2011. He indicated that his tax liability for 2012 was unknown since he had not filed his return. In May 2015, Applicant paid $2,000 toward a federal tax debt of $5,000 for 2011. Even assuming that he has paid his federal tax debts for 2009 and 2010, he has not yet shown that he filed any of his delinquent federal or state returns. Applicant testified that he owes more than $10,000 in past-due state income taxes because he did not have income withheld for state taxes. Additionally, Applicant's credit report shows that while he was making payments to a credit union on a closed credit card account, he had yet to resolve a $323 debt in collection since 2009 (SOR ¶ 1.k). Applicant denied the debt on the basis of payment, but he provided no corroborating documentation, and he cannot recall paying the debt. Even if that debt has been paid, he does not dispute an outstanding liability on the credit card account in SOR ¶ 1.m, which was originally charged off for $11,762 and had a $7,632 reported balance as of February 2014. The $377 collection debt in SOR ¶ 1.l was paid, but not until March 2015. Three disqualifying conditions under AG ¶ 19 are established:

(a) inability or unwillingness to satisfy debts;

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

(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Mitigating condition 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," cannot reasonably apply. The accounts in SOR ¶¶ 1.k and 1.m became delinquent over five years ago, but there is no proof they have been resolved. The retail credit card account in SOR ¶ 1.l became delinquent in June 2014, so it is a relatively recent debt. Furthermore, Applicant has a pattern of persistent noncompliance with his federal and state income tax filing and payment obligations.

Mitigating condition 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances," is minimally established. Applicant had to pay child support at $600 a month from 2008 until his daughter turned 18 in February 2015. However, his military retirement income has been sufficient to cover his child support, and to the extent that child support compromised his finances, it would not mitigate his income tax issues. Address issues with DFAS and the postal service aside, Applicant did not act responsibly when he failed to file tax returns and proper state tax withholding documents.

AG ¶ 20(c), "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," and AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," both address efforts to resolve financial issues of security concern. Applicant's satisfaction of the debt in SOR ¶ 1.l in March 2015 warrants a favorable finding as to that debt. Applicant is also credited with paying the IRS $2,000 in June 2015. Yet, there is no evidence of any recent payments toward the debt in SOR ¶ 1.m. He still owes $3,000 in federal taxes for 2011. His federal tax indebtedness for 2012 is not in the record. His outstanding state tax delinquency exceeds $10,000, and he has not yet filed any of his state tax returns. Concerning his financial stability going forward, Applicant reports some discretionary income since he has given up drinking alcohol. He has given priority to paying off a closed credit card account that had been delinquent. The DOHA Appeal Board has held that an applicant is not required to establish that he has paid off each debt in the SOR, but he needs to show that he has a plan to resolve his debts and that he has taken significant steps to implement his plan. *See* ISCR 07-06482 (App. Bd. May 21, 2008). His post-hearing completion of the state tax withholding form is a significant first step, but it is not enough to fully mitigate the financial judgment concerns raised by his noncompliance with his federal and state tax filing and payment obligations for several years. So too, Applicant has not yet established a plan to pay the sizeable credit card delinquency in SOR ¶ 1.m. The financial considerations concerns are not fully mitigated.

Guideline G, Alcohol Consumption

The security concern for alcohol consumption is articulated in AG ¶ 21:

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

Applicant was awarded non-judicial punishment while he was in the military for drinking before duty around 1989 and for a DWI around 2000, but alcohol largely became a problem for him in the last decade. In December 2006, he was suspected of being under the influence of alcohol on the job and asked by his employer to submit to a blood test. His decision to resign from his employment rather than submit to the test suggests, but does not prove, that he was under the influence on the job. Applicant admits that he had consumed alcohol the previous evening, but not that morning. Whether or not he drank alcohol before reporting to work, alcohol was clearly becoming a problem for him. After he was convicted of driving while impaired in March 2007, he continued to drink up to 12 beers a week, mostly on the weekends. Two years later, he pleaded nolo contendere to a May 2009 DUI charge. Applicant stopped frequenting bars after his arrest in 2009, but he continued to consume beer and hard liquor. By May 2013, he was drinking an average of five to seven alcohol beverages nightly at home, usually to intoxication. In late May 2013, Applicant underwent three days of alcohol detoxification before being treated for diagnosed alcohol dependence in a partial hospitalization program from June 4, 2013, to June 20, 2013. Applicant was abstinent for about nine months after his discharge before a serious relapse in March or April 2014. He continued to consume alcohol until approximately

October 13, 2014, when he was asked by his employer to submit to an alcohol test because he was under the influence. As to the amount and frequency of his consumption when he relapsed, Applicant would only state that once he picked up that first drink, he was right back where he started. The following disqualifying conditions under AG ¶ 22 are established to a greater or lesser extent:

> (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;
>
> (b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or as alcohol dependent;[3]
>
> (c) 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;
>
> (e) evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program; and
>
> (f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.

Given Applicant's serious relapse after completing treatment for diagnosed alcohol dependence, AG ¶ 23(a) cannot reasonably apply. It provides as follows:

> (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

[3] Without some proof that Applicant was impaired by alcohol at work in December 2006, AG ¶ 22(b) is not established with regard to that incident. However, Applicant testified at his hearing that he was asked to take a breathalyzer at work in October 2014. While he did not take the breathalyzer on the advice of his union, he was suspended from work after the incident (Tr. 90), and it led him to stop drinking and return to AA. (Tr. 137.) In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered:

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

(citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). AG ¶ 22(b) applies to the October 2014 incident.

does not cast doubt on the individual's current reliability, trustworthiness, or good judgment.

Applicant's successful completion of the partial hospitalization program in June 2013 is evidence of action taken to overcome his alcohol dependency problem under AG ¶ 23(b), and it fulfills the treatment program required under AG ¶ 23(d). AG ¶¶ 23(b) and 23(d) provide as follows:

> (b) 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); and
>
> (d) 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 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.

At his discharge in June 2013, Applicant appeared to have a favorable prognosis. According to a staff therapist, Applicant had put forth great effort and leadership in his recovery and was free of addictive substances with more insight into his addiction and increased coping skills to prevent relapse. He was discharged to continue his recovery in an intensive outpatient program at the facility. The evidentiary record is largely silent as to the nature and extent of Applicant's participation in the outpatient program. He attended AA only to stop after three months because he felt that he could handle sobriety on his own. Without the support of AA, he relapsed in March or April 2014 and drank alcohol for the next six months.

Since resuming his affiliation with AA in October 2014, Applicant has attended daily meetings except on some weekends when he has been at work. Active in the AA program, he is currently working on step 4, which he correctly identified as taking a moral inventory. He has taken on a temporary second sponsor to help him in that regard. He has maintained abstinence for at least ten months as of his security clearance hearing. His present involvement in AA includes speaking engagements and providing rides to meetings. While this level of commitment to the AA program increases the likelihood of Applicant being able to maintain his sobriety, ten months of abstinence is not enough of a pattern to overcome the alcohol consumption concerns, particularly in light of the duration of his relapse in 2014 and the lack of any current prognosis by a duly qualified medical professional or licensed clinical social worker. Applicant's AA participation is encouraging, but it is too soon to conclude with confidence that he is fully rehabilitated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).[4]

The analyses under Guidelines F and G are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment. Applicant is credited for seeking alcohol rehabilitation treatment in 2013 when he realized he had an alcohol problem. His relapse from March or April 2014 to October 2014 shows the magnitude of his dependency problem. Applicant did not show good judgment in dealing with his federal and state income tax obligations. While he may have erroneously assumed that his employer would automatically transfer state withholdings when he moved in 2008, he realized some three years later that was not the case. He took no action before his security clearance hearing to file the proper income tax withholding documents. Whether he could afford to pay the taxes owed, he had a separate obligation to file timely federal and state income tax returns. His complacency regarding the tax issues is incompatible with the judgment that must be demanded of persons granted security clearance eligibility. It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). For the reasons already discussed, grant of a security clearance to Applicant is not warranted at this time.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a-1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	Against Applicant

[4] The factors under AG ¶ 2(a) are as follows:

> (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.

Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant[5]
Subparagraph 2.b:	For Applicant
Subparagraph 2.c-2.d:	Against Applicant
Subparagraph 2.e:	For Applicant
Subparagraph 2.f:	Against Applicant
Subparagraph 2.g:	Against Applicant

Conclusion

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

Elizabeth M. Matchinski
Administrative Judge

[5] Treatment is viewed favorably, especially when undertaken voluntarily as in Applicant's case. SOR ¶ 1.a is found against Applicant because he consumed alcohol after being diagnosed with and treated for alcohol dependence.