

KEYWORD: Criminal Conduct; Alcohol; Financial; Personal Conduct

DIGEST: While Applicant mitigated security concerns under Guidelines J, G, and E, he failed to mitigate security concerns relating to his financial delinquencies. Clearance is denied.

CASENO: 04-05994.h1

DATE: 04/14/2006

DATE: April 14, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-05994

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Sabrina E. Redd, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

While Applicant mitigated security concerns under Guidelines J, G, and E, he failed to mitigate security concerns relating to his financial delinquencies. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On June 10, 2005, under the applicable Executive Order ⁽¹⁾ and Department of Defense Directive, ⁽²⁾ DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision-security concerns raised under Guideline J (Criminal Conduct), Guideline G (Alcohol Consumption), Guideline F (Financial Considerations), and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing July 1, 2005, and elected to have a hearing before an administrative judge. The case was assigned to me August 18, 2005.

On November 7, 2005, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and offered eight exhibits for admission to the record (Ex.s 1 through 8). The Government's exhibits were admitted to the record without objection.

Applicant called no witnesses and offered no exhibits. At the conclusion of the hearing, I left the record open until November 17, 2005, so that Applicant could, if he wished, submit additional documents in support of his case. On

November 15, 2005, Applicant submitted nine pages of documentation to supplement the hearing record. Six pages of the submission related to Applicant's financial situation, and these were identified as Applicant's Exhibit (Ex.) A; one page related to Applicant's successful completion of an alcohol safety action program, and this was identified as Applicant's Ex. B; and two pages related to financial assistance provided to Applicant since July 2005 by an individual, and this was identified as Applicant's Ex. C. Applicant's submissions were admitted to the record without objection. On December 1, 2005, DOHA received the transcript (Tr.) of the proceeding.

FINDINGS OF FACT

The SOR contains four allegations of disqualifying conduct under Guideline J, Criminal Conduct, one allegation of disqualifying conduct under Guideline G, Alcohol Consumption, six allegations of disqualifying conduct under Guideline F, Financial Considerations, and one allegation of disqualifying conduct under Guideline E, Personal Conduct, of the Directive. Applicant admitted all allegations of disqualifying conduct under Guidelines J, G, and F of the SOR and offered exculpatory mitigating conditions for his conduct. He denied the Guideline E allegation. Applicant's admissions are incorporated as findings of fact.

Applicant is 29 years old and unmarried. (Ex. 1.) He has completed high school. (Ex. 1.) For the past two or three years he has worked as a security guard for a government contractor. (Tr. 52-53.) In July 2005, he was laid off, subject to rehiring if he obtains a security clearance. (Tr. 36; 44.)

Applicant is the father of a five-year-old child and has a monthly child support obligation of approximately \$372. (Ex. 8 at 5; Tr. 46.) He lives alone and receives monthly unemployment compensation of \$850. A woman with whom he has a spouse-like relationship contributes approximately \$400 a month to his living expenses. (Tr. 46-47; Ex. C.) He owes approximately \$6,800 in delinquent debts. (Ex. 7.)

Applicant's financial delinquencies date back several years. In March 2000, a judgment in the amount of \$3,736 was entered against him on an account he opened in 1999. Applicant has made no payments to the judgment creditor. In his answer to DOHA financial interrogatories in April 2003, Applicant stated the judgment was a successor to an earlier judgment held by a credit card company and that the credit card company had withdrawn the earlier judgment in response to his agreement to make regular payments of \$222 per month until the debt was paid in full. Applicant made one payment in April 2003. He provided no evidence of any other payments. (Ex. 2 at 7; Ex. 7; Tr.35- 38.)

Applicant is 120 days overdue on payment to a creditor to whom he owes approximately \$931. In July 2005, Applicant committed to a payment plan on the debt. As of the day of his hearing, he had made one payment of \$100. (Ex. A, at 1-2; Tr. 38-39.) Applicant owed approximately \$1,537 to a creditor on a charged-off account. At his hearing, Applicant asserted he had paid approximately \$1,100 to the creditor but had received no acknowledgment of the payments or verification that the account had been paid. (Tr. 40-41.) In a post-hearing submission, Applicant provided a settlement offer, dated September 9, 2003, from the creditor but no evidence that he had acted upon the offer. (Ex. A at 4.)

Applicant owed approximately \$529 to a creditor. In a post-hearing submission, he provided evidence to show he had paid the creditor in full in June 2005. (Ex. A, at 1-3.)

Applicant acknowledged he had not paid a collection account debt of \$37 to an insurance company. He said he was not sure it was his debt. (Ex. 7; Tr. 42.) In his post-hearing submission, he provided evidence showing he had paid a collection account debt of \$87 in June 2005. (Ex. A at 1-3 Tr. 42-43.)

Applicant has a history of alcohol-related arrests. In June 1996, when he was 19 years old, Applicant was driving on a military installation. He was pulled over by a military policeman for driving with a defective headlight. The military policeman smelled alcohol on his breath. Applicant was subsequently arrested and charged with Driving Under the Influence, Driving After Consuming Alcohol Underage, and Defective Equipment. He pled guilty, was fined \$200, and received a sentence of 6 months unsupervised probation with the special condition that he could drive to and from work. (Ex. 6; Tr. 19-22.)

In September 1998, Applicant was riding his bicycle home from a convenience store. An acquaintance he knew from high school drove by and asked Applicant if he wanted a ride home. Applicant left his bicycle behind and got in the back seat of the car. There was one other passenger in the car. After driving around for a while, the driver of the car was pulled over by the police. The police inspected the car and found a firearm under the driver's seat and crack cocaine beside the driver's seat. The driver, Applicant, and the other passenger in the car were arrested and charged with Carrying a Concealed Weapon (misdemeanor), and Possessing a Firearm While in Possession of Drugs, and Manufacturing, Sale, and Possession of a Controlled Substance (felonies). In December, 1998, all charges against Applicant and the other passenger of the car were *nolle prosequi*. Applicant understood from his lawyer that the charges were "dropped." (Ex. 4; Tr. 25-29.)

In November 1998, Applicant was arrested and charged with being drunk in public. The charge was *nolle prosequi* pursuant to motion of the prosecution. (Ex. 5; Tr. 22-24.)

In December 2003, Applicant was arrested and charged with Driving Under the Influence. He was fined, his driver's license was suspended for one year, and he was ordered to attend an alcohol safety education program, which he successfully completed in August 2004. (Ex. 3; Ex.B; Tr. 29-31.)

Applicant has not received a diagnosis of alcohol dependence or alcohol abuse. (Tr. 31-33.) He perceived he had a problem with drinking alcohol and driving. He stopped drinking in 2004. At his hearing he testified he had resumed

drinking but said he drinks alcohol occasionally and does not drink to intoxication. (Tr. 32-34.) In a post-hearing submission, Applicant provided evidence he had successfully completed a court-ordered alcohol safety action program in August 2004. (Ex. B)

On November 12, 2002, Applicant completed a Questionnaire for National Security Positions (SF-86). Question 23(a) on the SF-86 reads as follows: "Have you ever been charged with or convicted of any felony offense? (Include those under Uniform Code of Military Justice." Applicant responded "no" to Question 23(a) and failed to disclose he had been arrested in September 1998 and charged with Possessing a Firearm While in Possession of Drugs and Manufacturing, Sale, and Possession of a Controlled Substance, which were felony crimes. In a signed, sworn statement to a special agent of the Defense Security Service in April 2003, Applicant denied attempting to falsify or to omit pertinent information his response to Question 23(a). He said he answered "no" because he had not been convicted and because his lawyer told him the felony charges against him had been dropped because the driver of the vehicle admitted responsibility for the felonious conduct. (Tr. 28-29.) He acknowledged he had misinterpreted the question. (Ex. 2 at 5.)

In responding to sub-questions © and (f) of Question 23, Applicant admitted being charged or convicted of offenses related to alcohol or drugs and to receiving fines in 1996 for carrying a knife and operating a vehicle after consuming alcohol. (Ex. 1 at 7.)

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 2, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

CONCLUSIONS

Guideline J - Criminal Conduct

In the SOR, DOHA alleged a history or pattern of criminal activity that created doubt about Applicant's judgment, reliability, and trustworthiness. DOHA alleged that on or about December 21, 2003, Applicant was arrested and charged with Driving Under the Influence (¶ 1.a.); that on or about November 20, 1998, Applicant was charged with being Drunk in Public and the charge was *nolle prosequi* on or about December 14, 1998 (¶ 1.b.); that on or about September 5, 1998, Applicant was charged with Carrying a Concealed Weapon (misdemeanor), Possessing a Firearm While in Possession of Drugs and Manufacturing, Sale, and Possession of a Controlled Substance (felonies), and on or about December 18, 1998, all charges were *nolle prosequi* (¶ 1.c.); and that on or about June 26, 1996, Applicant was arrested by military police on a military installation and charged with Driving Under the Influence, Driving After Consuming Alcohol Underage, and Defective Equipment and he pled guilty, was fined \$200, and sentenced to six months probation. (¶ 1.d.)

Applicant's admitted criminal conduct raises security concerns under Disqualifying Conditions (DC) E2.A10.1.2.1 and E2.A10.1.2.2 of Guideline J. His history or pattern of criminal activity raises doubts about his judgment, reliability and trustworthiness. ¶ E2.A10.1.1. A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. Where the facts proven by the Government or admitted by the applicant raise doubts about the applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nevertheless security worthy.

Relevant mitigating conditions for the criminal behavior alleged in this case include Mitigating Condition (MC) E2.A10.1.3.1. (*the criminal behavior was not recent*); MC E2.A10.1.3.2. (*the crime was an isolated incident*); and MC E2.A10.1.3.4. (*the person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur*). Applicant's first episode of criminal behavior occurred 10 years ago, when he was 19 years old and arrested by a military policeman on a military facility for Driving Under the Influence, Driving After Consuming Alcohol Underage, and Defective Equipment. Two years later, when Applicant was 21 years old, he was a passenger in a car driven by an acquaintance. The acquaintance was pulled over by police, who found a firearm and drugs in the vehicle. Applicant, another passenger in the car, and the driver were charged with one misdemeanor (Carrying a Concealed Weapon) and two felonies (Possessing a Firearm While in Possession of Drugs and Manufacturing, Sale and Possession of a Controlled Substance). The charges against Applicant were *nolle prosequi*, as were charges in November 1998 that Applicant was Drunk in Public. Five years later, in December 2003, Applicant was arrested and charged with Driving Under the Influence.

I conclude that Applicant's criminal behavior was not recent, and thus MC E2.A10.1.3.1. applies. While two of the alcohol-related charges against Applicant occurred when he was 21 years of age or younger, the third occurred approximately five years after his 21st birthday. Taken together, these three incidents were not isolated, and thus MC E2.A10.1.3.2. is inapplicable. Applicant testified convincingly that he was unaware of the firearm and the drugs in his acquaintance's car, and the record shows the charges against him and the other passenger of the car were not prosecuted. Accordingly, I find that MC E2.A10.1.3.4. applies in mitigation to criminal behavior alleged in ¶ 1.c. of the SOR.

Additionally, I have evaluated the allegations of criminal behavior and the facts of Applicant's case against the nine factors comprising the whole person concept, as specified at ¶ E2.2 of Enclosure 2 of the Directive.⁽³⁾ I conclude Applicant has successfully mitigated the disqualifying criminal behavior alleged in ¶¶ 1.a., 1.b., and 1.d. of the SOR.

Guideline G - Alcohol Consumption

In the SOR DOHA alleged that the criminal conduct alleged in ¶¶ 1.a., 1.b., and 1.d., was also disqualifying conduct under Guideline G of the Directive (¶ 2.a.).

Security concerns under Disqualifying Condition (DC) E2.A7.1.2.1.⁽⁴⁾ are raised by Applicant's admissions and the record evidence. Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, and failure to control impulses, thereby increasing the risk of unauthorized disclosure of classified information due to carelessness. Applicant's admissions and the record evidence show he was arrested or detained for three alcohol-related incidents away from work between 1996 and 2003, thus raising a concern under DC E2.A7.1.2.1. of Guideline G.

The security concerns raised by Applicant's Guideline G disqualifying conduct could be mitigated if the alcohol related

incidents do not indicate a pattern (Mitigating Condition (MC) E2.A7.1.3.1.), the problem with excessive alcohol consumption occurred a number of years ago and there is no indication of a recent problem (MC E2.A7.1.3.2.), and if Applicant shows positive changes in behavior supportive of sobriety (MC E2.A7.1.3.3.). Applicant's disqualifying conduct could also be mitigated if, following a diagnosis of alcohol abuse or alcohol dependence, he successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participated frequently in meetings of Alcoholics Anonymous or a similar organization, abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program. (MC E2.A7.1.3.4.)

Applicant had two alcohol-related arrests or detentions before his 21st birthday and one arrest for Driving Under the Influence in 2003, when he was 26 years old. After his Driving Under the Influence arrest in 2003, he participated in and successfully completed a court-ordered alcohol safety action program.

Applicant has not been diagnosed as an alcohol abuser or as dependent on alcohol. He provided testimony that, while not completely abstinent, he is a responsible drinker. Accordingly, I conclude that MC E2.A7.1.3.1., MC E2.A7.1.3.2., and MC E2.A7.1.3.3. apply to Applicant's case. I further conclude that since Applicant has not received a diagnosis of alcohol abuse or dependence, MC E2.A7.1.3.4. does not apply in his case. Accordingly, the Guideline G allegations in the SOR are concluded for the Applicant.

Guideline F - Financial Considerations

The Government's concern under Guideline F, Financial Considerations, is that individuals who are financially overextended and unable or unwilling to pay their just debts may try to generate funds by engaging in illegal acts. Applicant has a history of not meeting his financial obligations, and he has demonstrated an inability or an unwillingness to satisfy his debts. These conditions raise security concerns under subparagraphs E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F. DOHA's Appeal Board has concluded that "[a] person who is unwilling to fulfill his legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information." ISCR Case No. 98-0810 at 4 (App. Bd. June 8, 2000).

In the SOR, DOHA alleged that Applicant was indebted to a creditor on a judgment entered against him in November 2000 in the approximate amount of \$3,7376 and that, as of May 20, 2005, the debt had not been paid (¶ 3.a.); that he was indebted to a creditor on an account in the amount of approximately \$931, and that, as of at least May 20, 2005, the debt had not been paid (¶ 3.b.); that he was indebted to a creditor on a charged-off account in the approximate amount of \$529 and that, as of at least May 20, 2005, the debt had not been paid (¶ 3.c.); that he was indebted to a creditor on an account that had been charged-off in the approximate amount of \$1,537 and that as of at least May 20, 2005, the debt had not been paid (¶ 3.d.); that he was indebted in the approximate amount of \$37 to an insurance company on a collection account and that, as of at least May 20, 2005, the debt had not been paid (¶ 3.e.); and that he was indebted to a creditor on a collection account in the amount of \$87, and that as of at least May 20, 2005, the debt had not been paid (¶ 3.f.).

To his credit, Applicant provided evidence he paid the delinquencies identified at ¶¶ 3.c. and 3.f. of the SOR. He provided no evidence that he satisfied or settled the delinquencies identified at ¶¶ 3.a., 3.b., 3.d., and 3.e. of the SOR.

The Government has established, through Applicant's admissions and the record evidence, a *prima facie* case that Applicant is financially overextended. Applicant provided no persuasive evidence to rebut four of the six financial concerns specified in the SOR and identified as disqualifying conditions under ¶¶ E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F. ⁽⁵⁾

We turn to a review of the several conditions that could mitigate the security concerns raised by Applicant's financial delinquencies. Applicant's financial delinquencies involve long-standing debts, at least one of which dates to 2000. Thus, neither mitigating condition E2.A.6.1.3.1. nor mitigating condition E2.A6.1.3.2. applies. ⁽⁶⁾

Applicant lost his job in July 2005, and he has been relying on unemployment compensation and financial support from a friend since that time. While Applicant has been experiencing financial difficulties from unemployment during the past year, the record does not indicate his financial problems result entirely from conditions beyond his control. ⁽⁷⁾

The record does not indicate Applicant sought counseling for his financial problems, nor does the evidentiary record support a conclusion he has developed and implemented a practical plan for resolving debts and avoiding further indebtedness. Thus, mitigating conditions E2.A6.1.3.4. and E2.A6.1.3.6. do not apply. ⁽⁸⁾ Accordingly, the Guideline F allegations at ¶¶ 3.c. and 3.f. of the SOR are concluded for the Applicant, and the Guideline F allegations at ¶¶ 3.a., 3.b., 3.d., and 3.e. of the SOR are concluded against him.

Guideline E - Personal Conduct

In the SOR, DOHA alleged Applicant deliberately falsified his answer on his SF-86 to Questions 23(a). (¶ 4.a). Applicant denied knowingly falsifying his answer. He said he did not list the arrest alleged at SOR ¶ 1.c. because he was not convicted and his lawyer told him the charges against him had been dropped. In response to other elements of Question 23, Applicant listed an arrest for carrying a knife and operating a vehicle after consuming alcohol, demonstrating he had no intent to hide derogatory criminal conduct.

Applicant's alleged conduct falls under disqualifying conditions E2.A5.1.2.2. and E2.A5.1.2.4. of Guideline E. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that an applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

With respect to the Guideline E conduct alleged in the SOR, Applicant, who does not have legal training, appears to have answered the question candidly and to the best of his knowledge and ability. I conclude he successfully rebutted the Government's allegation of deliberate falsification of his answer to Question 23(a) on his SF-86. Accordingly, the allegation in ¶ 4.a. of the SOR is concluded for the Applicant.

In ISCR Case No. 98-0761 at 3 (Dec.27, 1999), DOHA's Appeal Board states that an administrative judge, in deciding an Applicant's security worthiness, "must consider the record as a whole (Directive Section F.3.) and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*." I have considered the record as a whole and have evaluated Applicant's conduct under the whole person concept of the Directive. I conclude that Applicant has not mitigated the security concerns raised by the Guideline F allegations in the SOR and he has not demonstrated that it is clearly consistent with the national interest to grant him a security clearance.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1.: Guideline J: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Paragraph 2.: Guideline G: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Paragraph 3.: Guideline F: AGAINST APPLICANT

Subparagraph 3.a.: Against Applicant

Subparagraph 3.b.: Against Applicant

Subparagraph 3.c.: For Applicant

Subparagraph 3.d.: Against Applicant

Subparagraph 3.e.: Against Applicant

Subparagraph 3.f.: For Applicant

Paragraph 4.: Guideline E: FOR APPLICANT

Subparagraph 4.a.: For Applicant

DECISION

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 or continue a security clearance for Applicant. Clearance is denied.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. The nine factors comprising the whole person concept are as follows: the nature, extent, and seriousness of the conduct (E2.2.1.1); the circumstances surrounding the conduct, to include knowledgeable participation (E2.2.2.1.2.); the frequency and recency of the conduct (E2.2.1.3.); the individual's age and maturity at the time of the conduct (E2.2.1.4.); the voluntariness of participation (E2.2.1.5.); the presence or absence of rehabilitation and other pertinent behavioral changes (E2.2.1.6.); the motivation for the conduct (E2.2.1.7.); the potential for pressure, coercion, exploitation, or duress (E2.2.1.8); and the likelihood of continuation or recurrence (E2.2.1.9.).
4. ¶ E2.A7.1.2.1. under Guideline G, Alcohol Consumption identifies "alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use" as conduct that could raise a security concern and disqualify one from a grant of a security clearance.
5. Disqualifying Condition E2.A6.1.2.1 reads: " A history of not meeting financial obligations." Disqualifying Condition E2.A6.1.2.3 reads:"Inability or unwillingness to satisfy debts."
6. Mitigating Condition E2.A6.1.3.1 reads: "The behavior was not recent." Mitigating Condition E2.A6.1.3.2 reads: "It was an isolated incident."
7. Mitigating Condition E2.A6.1.3.3. reads: "The conditions that resulted in the behavior were largely beyond the person's control (e.g. loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation)."
8. Mitigating Condition E2.A6.1.3.4. reads: "The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control." Mitigating Condition E2.A6.1.3.6 reads: "The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."