



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



In the matter of: )  
 )  
----- ) ISCR Case No. 08-06325  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel  
For Applicant: *Pro se*

May 12, 2010

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) lists 19 debts totaling \$37,488. In the last three years she settled and paid 15 SOR and non-SOR collection debts totaling \$22,186. She has a reasonable plan for resolving her remaining debts. Applicant had seven alcohol-related driving arrests from 1992 to July 2006. She stopped consuming alcohol in August 2006, except for consuming beer on one occasion in March 2007. She actively participates in Alcoholics Anonymous (AA). Security concerns are mitigated and eligibility for access to classified information is granted.

**Statement of the Case**

On November 20, 2006, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance application (SF 86). (GE 1) On October 5, 2009, the Defense Office of Hearings and Appeals (DOHA) issued an SOR to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified; and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guidelines G (alcohol consumption) and F (financial considerations). (Hearing Exhibit (HE) 3) The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive 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 Applicant's clearance should be granted, continued, denied, or revoked. (HE 3)

On November 5, 2009, Applicant responded to the SOR and requested a hearing. (HE 4) On January 12, 2010, Department Counsel indicated he was ready to proceed on Applicant's case. On January 22, 2010, DOHA assigned Applicant's case to me. On February 11, 2010, and February 26, 2010, DOHA issued hearing notices.<sup>1</sup> (HE 1, 2) On March 10, 2010, Applicant's hearing was held using video teleconference. (Transcript (Tr. 4; HE 1, 2) At the hearing, Department Counsel offered six exhibits (GE 1-6) (Tr. 28-32), and Applicant offered 18 exhibits. (Tr. 56-64; AE A-R) There were no objections,<sup>2</sup> and I admitted GE 1-6 and AE A-R. (Tr. 32, 64) Additionally, I admitted the hearing notices, SOR, and Applicant's response to the SOR. (HE 1-4) On March 16, 2010, I received the transcript. On April 30, 2010, I received AE S. Department Counsel did not object to my consideration of AE S, and AE S is admitted into evidence.

### **Findings of Fact<sup>3</sup>**

Applicant's SOR response admitted the allegations in SOR ¶¶ 1.a to 1.i, except for 1.i as well as the debts in 2.a to 2.e and 2.g to 2.o.<sup>4</sup> She said the debt in SOR ¶ 2.c (\$792) duplicated the debt in SOR ¶ 2.h (\$792), and the debt in SOR ¶ 3.d (\$1,154) duplicated the debt in SOR ¶ 3.e (\$1,154). She denied the remainder of the debts. Her admissions are accepted as findings of fact.

Applicant is a 40-year-old employee of a government contractor.<sup>5</sup> (Tr. 6) The government contractor has employed her as a senior manufacturing engineer for 41 months. (Tr. 66) She was married from 1998 to 2001 and from 2003 to 2005. (Tr. 71) Both of Applicant's former husbands consumed excessive amounts of alcohol, and their alcohol abuse contributed to Applicant's alcohol abuse. (Tr. 72) They were abusive and

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<sup>1</sup>Applicant received notice of the date and time of her hearing from Department Counsel more than 15 days prior to the hearing. However, she did not receive her written hearing notice form until February 2, 2010. She waived the issue of 15 days' notice at her hearing. (Tr. 16-18)

<sup>2</sup>I granted Applicant's unopposed motion not to admit pages T-62 to T-66 of GE 4 because those documents did not pertain to Applicant. (Tr. 28-32; GE 4 at 18-22) Pages T-62 to T-66 are marked on the bottom of each page "not admitted."

<sup>3</sup>Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

<sup>4</sup>Unless stated otherwise, the facts in this paragraph are from Applicant's SOR response. (HE 4)

<sup>5</sup>Unless stated otherwise, the facts in this paragraph and the next paragraph are from Applicant's November 20, 2006 SF 86. (GE 1)

Applicant obtained restraining orders against them. (GE 1) Applicant is not currently married and does not have any children. (Tr. 6, 71) She earned a bachelor of science degree in chemical engineering in 1995. (Tr. 6) She has never held a security clearance. (Tr. 7)

Applicant disclosed the repossession of her mobile home and multiple delinquent debts on her security clearance application. She did not disclose any unpaid taxes or bankruptcies. She also disclosed seven arrests for driving while intoxicated (DWI) and two DWI convictions. She did not disclose any illegal drug use, or non-DWI criminal offenses.

### **Alcohol consumption**

In 1991, Applicant began to consume alcohol regularly on most Friday evenings beginning when she was 21 years old. (Tr. 75; HE 4; SOR ¶ 1.a) In 1992, the police arrested Applicant for her first DWI (Tr. 76-77; HE 4; SOR ¶ 1.b) She received one year of probation, and the DWI charge was dismissed. (Tr. 77-78) In 1997, the police charged Applicant with her second DWI. (Tr. 78-79; HE 4; SOR ¶ 1.c) The DWI charge was dismissed. (Tr. 79)

In January and May 2002, and March and December 2003, the police arrested Applicant a total of four times for DWI. (Tr. 79-89; HE 4; SOR ¶¶ 1.d-1.g) Her blood alcohol content has been as high as .25 or about three times the legal limit. (Tr. 136) After her December 2003 DWI arrest, she received a year of unsupervised probation, her driver's license was suspended, and the court required her to complete a substance abuse traffic offender's program. (Tr. 82)

Applicant received her first alcohol treatment and therapy program in February 2004. (Tr. 77-79, 83) This clinical intervention program consisted of 10 hours of one-on-one, outpatient counseling, 20 hours of group therapy, and 20 hours of classroom education. (Tr. 83) From February to July 27, 2004, she voluntarily enrolled in an outpatient treatment and detoxification program, and she refrained from any alcohol consumption during this attendance. (Tr. 85-86; SOR ¶ 1.h) However, a few days after leaving the program, she returned to alcohol consumption. (Tr. 87) On September 8, 2004, she checked herself into a detoxification facility, and checked herself out that same day because of an interaction she had at the facility with a man who previously consumed alcohol with her. (Tr. 87-88, 133; SOR ¶ 1.i) Her departure on September 8, 2004, was against staff advice. (Tr. 133)

From September 8, 2004 to December 2004, she consumed alcohol; however, she did not have any alcohol-related problems. (Tr. 89) From December 2004 until January 2006, she lived with her parents and did not consume alcohol. (Tr. 89)

From January 2006 to July 2006, Applicant consumed alcohol on a daily basis and gradually increased her alcohol consumption. (Tr. 90) She consumed up to 18 beers a day during the first six months of 2006. (Tr. 90) In July 2006, Applicant drank 12 beers, and then drove. (Tr. 92) The police arrested Applicant for DWI. (Tr. 90; SOR ¶

1.j) She pleaded guilty to DWI. (Tr. 97) She received a fine and six months of probation. From August 1, 2006, to August 24, 2006, she received in-patient treatment for alcohol dependency. (Tr. 93-95,135; SOR ¶ 1.k) The diagnosis of alcohol dependency was made the director of a chemical dependency unit of a mental health center.<sup>6</sup> (GE 4 at 3)

After receiving the diagnosis of alcohol dependency, Applicant consumed alcohol on one occasion in March 2007 at a festival (Tr. 97, 136; SOR 1.l) The “slip” in March 2007 was due to the false rationalization that she could drink two beers and stop. (Tr. 100) Instead, she drank six beers and this alcohol consumption confirmed to her that she could not control her alcohol consumption or handle responsible drinking. (Tr. 100) She has not consumed any alcohol since March 2007. (Tr. 98)

Applicant accepts that she is an alcoholic, and acknowledges she is alcohol dependent. (Tr. 100) She has continuously attended AA meetings since August 2007. (Tr. 98) She currently attends two to three meetings per week. (Tr. 99) When the temptation to consume alcohol is greater, such as during holidays, she attends five AA meetings per week. (Tr. 99) She attends eight meetings on a weekend for AA conventions. (Tr. 99) Applicant has contact with her AA sponsor usually five days a week. (Tr. 99) She has completed all 12 steps of the AA program, and is now on the maintenance program encompassed in the last three steps. (Tr. 101) Applicant volunteers at an in-patient therapy program at the alcohol treatment center and provides one-on-one counseling for alcoholics. (Tr. 102) Applicant is the treasurer for her AA group. (Tr. 102) She received her three-year AA chip at the end of March 2010. (Tr. 138) Her AA sponsor of over three years corroborates Applicant’s descriptions of her sobriety, AA participation, and volunteer work to help alcoholics. (AE J)

Department Counsel asked Applicant her future intentions concerning alcohol consumption, and Applicant responded:

My future intention is to be absolutely abstinent. I have seen where alcohol will take me and I definitely don’t have any plans to go back. I have seen what wonderful things can happen from having a sober life. Even though I was functioning and holding a job at the time I quit drinking, you know, I was also on good terms with my family. I wasn’t enjoying my family or being able to participate in my niece and my nephew’s lives. And now I can. . . . So I have learned that that life that I considered normal at one time is not really what a normal life is. And so my intentions are to remain abstinent. (Tr. 103-104)

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<sup>6</sup>The director’s credentials included licensed alcohol and drug abuse counselor (LADAC), which I infer is equivalent to licensed clinical social worker (LCSW). (GE 4 at 3) See AG ¶¶ 22(d) and 22(e) (listing LCSW as one of several credentials for evaluating or diagnosing a patient as “alcohol dependent”).

## Financial Considerations

Applicant was fired from her employment in February 2004 for absenteeism and driving on company property without a driver's license. (Tr. 69) In 2004, her husband was abusive and she suffered from migraines. (Tr. 70) She missed work due to migraines. (Tr. 70) From February 2004 to August 2004, she was unemployed. (Tr. 73) She received financial support from unemployment compensation. (Tr. 73) From December 2004 to August 2005, she was unemployed, and during this period of unemployment she lived with her parents. (Tr. 73) She has been employed from August 2005 to the present. (Tr. 74)

Some of Applicant's delinquent debt resulted from her divorce. (Tr. 72) She assumed full responsibility for the joint debts from her marriage. (Tr. 72) Some of her debts resulted from falling while she was drunk and being taken to the hospital in an ambulance. (Tr. 105) SOR debts 1.a to 1.l, totaling \$19,781, are all medical debts. Her medical debts were generated in 2003 to 2004. (Tr. 106) The six debts in SOR ¶¶ 2.g (\$1,713), 2.h (\$792), 2.i (\$311), 2.j (\$299), 2.k (\$212), and 2.l (\$387) were all medical debts being collected by the same company. On April 13, 2009, she sent a certified letter to the creditor asking for the status of her debts. (AE A at 1; AE O) She learned from the SOR-listed creditor that those six debts were returned to the two original creditors. (Tr. 112-113) Applicant paid one of the original creditors, resolving the debts in SOR ¶¶ 2.i and 2.j; however, she was unable to obtain the information on the other four debts from the other original creditor. (Tr. 112-113; AE O, AE R) She received financial counsel and generated a budget. (AE S) She promised to continue to attempt to obtain the necessary information so that she could resolve the last four debts.

In 1996, Applicant bought a mobile home for \$20,000. (Tr. 110) It lost value and was a poor investment. (Tr. 105) She made her payments on this secured loan until 2005. (Tr. 110) She was unable to keep up with her payments, and her mobile home was repossessed and sold at auction. (Tr. 110) The creditor in SOR ¶ 2.f (\$7,678) offered to settle the balance owed on her mobile home for \$5,000. (Tr. 111) She paid the settlement amount, and her TransUnion Credit Report reflects the payment and resolution of this debt. (Tr. 111-112; AE A at 1; AE N at page 3)

On January 24, 2010, Applicant placed the four medical debts in SOR ¶¶ 2.a (\$2,926), 2.b (\$2,363), 2.c (\$792), and 2.d (\$1,154), as well as one credit card debt SOR ¶ 2.o (\$8,978) into her debt consolidation plan for resolution. (Tr. 107-108, 118; AE A at 1; AE M) She made three monthly payments of \$297 into the program prior to her hearing. (Tr. 131)

The debt in SOR ¶ 2.m (\$7,696) is for a delinquent credit card account. (Tr. 114) In 2006, it was transferred to another lender. (AE N at 2) Several years ago, she settled and paid this debt. (Tr. 115)

On November 1, 2007, Applicant sent the creditor a letter asking for verification of the debt in SOR ¶ 2.n (\$529). (Tr. 116-118; AE P) The creditor did not provide any information about the debt's origin, and the debt is in dispute. (Tr. 118)

The debt in SOR ¶ 2.p (\$217) appears on her December 14, 2006 credit report as a medical debt accrued in 2005. (GE 9 at 12) Applicant received contact information from Department Counsel, and she promised to contact the creditor. (Tr. 120) This debt does not appear on her January 12, 2009, or August 10, 2009 credit reports. (GE 8, 9)

The debt in SOR ¶ 2.q (\$62) appears on her December 14, 2006 credit report as a television cable-type debt accrued in 2004. (GE 9 at 14) In March 2009, Applicant called the creditor, and they were unable to locate the account information. (Tr. 120) This debt does not appear on her January 12, 2009, or August 10, 2009 credit reports. (GE 8, 9)

The debts in SOR ¶¶ 2.r (\$194) and 2.s (\$31) appear on her December 14, 2006 credit report as telephone-type debts accrued in 2003 and 2004. (GE 9 at 79, 80) Department Counsel explained to Applicant how to contact the creditors using the information in her 2006 credit report. (Tr. 120-121) She paid the debt in SOR ¶ 2.s. (AE N at 9) The debts in SOR ¶¶ 2.r and 2.s do not appear on her January 12, 2009, or August 10, 2009 credit reports. (GE 8, 9)

Applicant's monthly gross salary is \$5,100. (Tr. 68, 123; GE 3 at 13) Her monthly net income is \$2,850, her monthly expenses are about \$2,200, and her monthly remainder is \$650. (Tr. 124; GE 3 at 13; AE S) She has about \$2,200 in her checking account, and about \$22,000 in her IRA. (Tr. 125) She purchased her vehicle, a 2006 Honda, using a loan from her 401K account, which she is repaying through a \$460 monthly automatic allotment from her salary. (Tr. 125-126) She does not have a personal credit card. (Tr. 126) Her income taxes are current. (Tr. 126)

Applicant has not accrued any new delinquent debts after 2005. (Tr. 137) Her August 14, 2009, credit report shows "paid" for the six collection accounts: \$167 (AE N at 5); \$132 (AE I; AE N at 8); \$315 (AE N at 8); \$560 (AE E; AE N at 8); \$136 (AE N at 9); and \$94 (AE F; AE N at 9). She provided proof of payment of four non-SOR collection accounts: (1) \$2,009 on January 29, 2007 (AE B); (2) \$2,200 on May 2, 2008 (AE C); (3) \$177 on March 26, 2009 (AE H); and (4) \$381 on March 26, 2009 (AE I).

In April 2010, Applicant received financial counseling and generated a budget.<sup>7</sup> She plans to save sufficient funds to permit her to begin good-faith negotiations for settling each remaining unresolved debt with a lump-sum payment. (AE S) She promised to show financial responsibility and pay her debts, with the goal of achieving a good-credit rating.

### **Character evidence**

Applicant's manager is her first-line supervisor. (Tr. 37-39) He has been employed by Applicant's employer for 26 years, and has held a security clearance for more than 10 years. (Tr. 37-39) He has worked with Applicant on a daily basis for more

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<sup>7</sup>Applicant received financial counseling on April 7, 9, and 13, 2010. (AE S) She also generated a budget. AE S is the source for the facts in this paragraph.

than three years. (Tr. 40, 42) She disclosed to him that she had alcohol and financial issues, which were delaying her security clearance's resolution. (Tr. 43) Applicant is diligent, responsible, trustworthy, and reliable. (Tr. 41) He recommended approval of her security clearance. (Tr. 43)

A senior manufacturing engineer, who works with Applicant, has been employed by the contractor for nine years. (Tr. 47) She has known Applicant as a friend for three years, and sees her on a daily basis. (Tr. 48-49, 52-53) They have volunteered together for community projects, been to parties together, and been to each other's residences. (Tr. 48-49) She has never seen Applicant consume alcohol or smelled alcohol on her person. (Tr. 49-50, 52-53) She is aware that Applicant had problems with her finances and alcohol and attends AA meetings. (Tr. 50-51) Applicant is reliable, dependable, and responsible. (Tr. 51-52)

A quality engineer for Applicant's employer has known Applicant for two years. (AE K) She describes Applicant as honest, courteous, conscientious, dedicated, and diligent. (AE K) She recommended approval of Applicant's security clearance. (AE K)

## **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." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk 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. 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." See Exec. Or.

10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole 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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

### **Analysis**

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concerns are under Guideline G (alcohol consumption) and F (financial considerations).

#### **Alcohol Consumption**

AG ¶ 21 articulates the Government's concern about alcohol consumption, "[e]xcessive 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."

Seven Alcohol Consumption disqualifying conditions could raise a security or trustworthiness concern and may be disqualifying in this case. AG ¶¶ 22(a) - 22(g) provide:

- (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 alcohol dependent;

(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;

(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;

(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;

(f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program; and

(g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

AG ¶¶ 22(b), 22(d), and 22(g) do not apply. Applicant did not consume alcohol at work or have any alcohol-related incidents at work. Her alcohol consumption problem was not diagnosed or evaluated “by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist).” Applicant has not failed to comply with a court order not to consume alcohol.

AG ¶¶ 22(a), 22(c), 22(e), and 22(f) apply. Applicant had seven DWI arrests from 1992 to July 2006, and she had DWI convictions for her 2003 and July 2006 DWI offenses. Even though she was not convicted of five DWIs, I conclude she was in fact DWI on those occasions. In the first six months of 2006, she consumed up to 18 beers in a day, and her blood alcohol content for one of her DWIs was .25. This level of alcohol consumption constitutes “binge” consumption. The director of a recognized alcohol-treatment program, whose credentials are equivalent to a LCSW, wrote a letter indicating Applicant was alcohol dependent. See n. 6 at page 2, *supra*. Applicant was properly diagnosed as alcohol dependent in August 2006. After receiving alcohol treatment in 2004, and 2006, and after being diagnosed as alcohol dependent in 2006, she consumed alcohol on one occasion in March 2007. Her alcohol consumption in March 2007 constitutes a relapse. She had a previous relapse in 2006 after alcohol-related treatment in 2004.

“Once a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance.” ISCR Case No. 07-00852 at 3 (App. Bd. May 27, 2008) (citing *Dorfmont v. Brown*, 913

F.2d 1399, 1401 (9<sup>th</sup> Cir. 1990)). Because the government has met its initial burden concerning alcohol consumption security concerns, the burden now shifts to Applicant to establish any appropriate mitigating conditions. Directive ¶ E3.1.15.

Four Alcohol Consumption mitigating conditions under AG ¶ 23 are potentially applicable:

(a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(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);

(c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; 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 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.

Security clearance cases are difficult to compare, especially under Guideline G, because the facts, degree, and timing of the alcohol abuse and rehabilitation show many different permutations. The Appeal Board has determined in cases of substantial alcohol abuse that AG ¶ 23(b) did not mitigate security concerns unless there was a fairly lengthy period of abstaining from alcohol consumption.<sup>8</sup>

AG ¶¶ 23(b) and 23(d) fully apply. Applicant had seven DWIs from 1992 to July 2006. On August 24, 2006, Applicant was diagnosed as being alcohol dependent. She fully acknowledged and completely and candidly described her history of alcohol consumption. She stopped her alcohol consumption in August 2006, and then relapsed or "slipped" in March 2007, when she drank six beers. She did not minimize her alcohol consumption problem. Statements from colleagues, friends, her supervisor, and her AA sponsor about her abstaining from alcohol consumption after August 2006 provided valuable corroboration of her statement. She successfully completed an alcohol

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<sup>8</sup>See ISCR Case No. 06-17541 at 3-5 (App. Bd. Jan. 14, 2008); ISCR Case No. 06-08708 at 5-7 (App. Bd. Dec. 17, 2007); ISCR Case No. 04-10799 at 2-4 (App. Bd. Nov. 9, 2007).

treatment or counseling program, and responded well to therapies. She continued her AA participation and has gone to hundreds of AA meetings over the last three years. She has completely abstained from alcohol consumption since March 2007, and has only consumed alcohol once (one day in March 2007) since August 2006.<sup>9</sup> She has taken all reasonable actions to ensure her continued successful rehabilitation, and therefore she receives full mitigating credit under AG ¶¶ 23(b) and 23(d).

## Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

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.

AG ¶ 19 provides two Financial Considerations Disqualifying Conditions that could raise a security concern and may be disqualifying in this case: "(a) inability or unwillingness to satisfy debts;" and "(c) a history of not meeting financial obligations." In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant's history of delinquent debt is documented in her credit reports, her security clearance application, her SOR response, and her statement at her hearing.

Applicant's SOR lists 19 debts totaling \$37,488. In the last three years she settled and paid 15 SOR and non-SOR collection debts totaling \$22,186. She settled

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<sup>9</sup>For example, in ISCR Case No. 05-16753 at 2-3 (App. Bd. Aug. 2, 2007) the Appeal Board reversed the administrative judge's grant of a clearance and noted, "That Applicant continued to drink even after his second alcohol related arrest vitiates the Judge's application of MC 3." In ISCR Case No. 05-10019 at 3-4 (App. Bd. Jun. 21, 2007), the Appeal Board reversed an administrative judge's grant of a clearance to an applicant (AB) where AB had several alcohol-related legal problems. However, AB's most recent DUI was in 2000, six years before an administrative judge decided AB's case. AB had reduced his alcohol consumption, but still drank alcohol to intoxication, and sometimes drank alcohol (not to intoxication) before driving. The Appeal Board determined that AB's continued alcohol consumption was not responsible, and the grant of AB's clearance was arbitrary and capricious. *See also* ISCR Case No. 04-12916 at 2-6 (App. Bd. Mar. 21, 2007) (involving case with most recent alcohol-related incident three years before hearing, and reversing administrative judge's grant of a clearance).

and paid the debts in SOR ¶¶ 2.f (\$7,778), 2.i (\$311), 2.j (\$299), 2.m (\$7,697), and 2.s (\$31). The debts in SOR ¶¶ 2.c (\$1,154) and 2.d (\$792) were duplications of the debts in SOR ¶¶ 2.e (\$1,154) and 2.h (\$792). On January 24, 2010, Applicant placed the five debts totaling \$16,213 listed in SOR ¶¶ 2.a (\$2,926), 2.b (\$2,363), 2.c (\$792), 2.d (\$1,154), and SOR ¶ 2.o (\$8,978) into her debt consolidation plan for resolution. She made three monthly payments of \$297 into the program prior to her hearing. Seven debts totaling \$3,314 remain for her to address more fully. Most of her SOR debts were delinquent for over five years. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant has provided sufficient evidence to rebut the validity of the three debts totaling \$473 listed in SOR ¶¶ 2.p (\$217), 2.q (\$62), and 2.r (\$194). Although the three debts appeared in her 2006 credit report, and did not appear in her January 12, 2009, or August 10, 2009, credit reports. She contacted one of the creditors, and they were unable to locate a record of the debt. She is still investigating the other two debts, and if she can validate them, I am confident that she will pay them.

Five debts are owed to the same medical creditor, and Applicant has contacted the creditor to seek payment information for the debts totaling \$2,312 listed in SOR ¶¶ 2.g (\$1,713), 2.k (\$212), and 2.l (\$387). Applicant has not accrued any new delinquent debts after 2005. She paid 10 non-SOR collection accounts since 2007, totaling \$6,171.

Applicant's conduct warrants partial application of AG ¶ 20(b). Her most recent marriage ended in 2005. Her husband was abusive. Applicant and her husband consumed excessive amounts of alcohol. Applicant was injured several times while she was intoxicated, generating medical bills. She had absences from work due to migraine headaches. She was unemployed from February to August 2004 and from December 2004 to August 2005. She does not receive full credit under AG ¶ 20(b) because her excessive alcohol consumption contributed to the other problems in her life. Nevertheless, starting in August 2006, she showed responsibility, self-discipline, and tenacity in maintaining contact with her creditors and making payments.<sup>10</sup> By August 2006, she was starting her new employment, had ended an abusive relationship with her spouse, and had ended her alcohol consumption. She acted aggressively and conscientiously to resolve her delinquent debts. She disclosed her delinquent debts and financial problems on her security clearance application. She established that she acted responsibly under the circumstances after August 2006.

AG ¶ 20(c) fully applies. Applicant received financial counseling. She created a reasonable plan to resolve her delinquent debts and followed through with it, accomplishing complete resolution of seven SOR debts (two duplications, five paid debts) totaling \$22,186. Five additional debts totaling \$16,213 are in an established payment plan. Three debts totaling \$2,312 are owed to the same medical creditor, and she has contacted the creditor to seek payment information for these debts. Based on her track record of debt payment since 2007, I found her promise to resolve her remaining, unresolved debts to be credible.<sup>11</sup> Three debts totaling \$473 are not established. Applicant understands what she must do to maintain her financial responsibility. Applicant's credit counselor cited the state statute of limitations of five years in her post-hearing debt-payment advice. (AE S) Under the Appeal Board's jurisprudence, debts that are beyond the statute of limitations for collections cannot be mitigated solely because they are not collectable.<sup>12</sup>

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<sup>10</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>11</sup> The Appeal Board has indicated that promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sept. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)).

<sup>12</sup>The statute of limitations clearly and unequivocally ends an Applicant's legal responsibility to pay the creditor after the passage of a certain amount of time, as specified in state law. In a series of decisions the Appeal Board has rejected the statute of limitations for debts generated through contracts, which is the law in all 50 states, as automatically mitigating financial considerations concerns under AG ¶ 20(d). See ISCR Case No. 08-01122 at 4 (App. Bd. Feb. 9, 2009); ADP Case No. 06-14616 at 3 (App. Bd. Oct. 18, 2007); ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008); ADP Case No. 07-13041 at 5 (App. Bd. Sep. 19, 2008); ISCR Case No. 07-11814 at 2 (App. Bd. Dec. 29, 2008). See also n. 12, *infra*.

Applicant also established partial mitigation under AG ¶ 20(d) by showing some good-faith<sup>13</sup> in the resolution of her SOR debts by admitting responsibility for them and paying or resolving over 60% of her delinquent SOR debts prior to her hearing.

AG ¶ 20(e) applies to the debt in SOR ¶ 2.n. Applicant documented her dispute of the debt in SOR ¶ 2.n (\$529) by asking for the basis of the debt and not receiving a response from the creditor. Applicant admitted her responsibility for all of her debts. Applicant did not provide documentation showing she disputed any of her other SOR debts.

In sum, Applicant diligently and responsibly resolved or is attempting to resolve her delinquent SOR debts. Since August 2006, she has stopped consuming alcohol (except for one occasion in March 2007). She has made significant progress in paying her creditors. She received financial counseling and understands what she must do to show her financial responsibility and maintain her eligibility for a security clearance. She provided documentary proof of resolution of numerous debts. I am confident she will keep her promise to pay her delinquent debts<sup>14</sup> because of her track record of financial progress shown over the last three years. Financial consideration concerns are mitigated.

### **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

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<sup>13</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) 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))

<sup>14</sup> Of course, the government can re-validate Applicant's financial status at any time through credit reports, investigation and/or additional interrogatories. Approval of a clearance now does not bar the government from subsequently revoking it, if warranted. Violation of a promise made in a security context to pay legitimate debts also raises judgment concerns under Guideline E, and may support future revocation of a security clearance. An administrative judge does not have authority to grant a conditional clearance. ISCR Case No. 99-0901, 2000 WL 288429 at \*3 (App. Bd. Mar. 1, 2000). See also ISCR Case No. 04-03907 at 2 (stating, "The Board has no authority to grant [a]pplicant a conditional or probationary security clearance to allow her the opportunity to have a security clearance while she works on her financial problems." and citing ISCR Case No. 03-07418 at 3 (App. Bd. Oct. 13, 2004)). This footnote does not imply that this Applicant's clearance is conditional.

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

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. AG ¶ 2(c) I have incorporated my comments under Guidelines G and F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

The whole-person factors against reinstatement of Applicant's clearance are significant; however, they do not warrant revocation of her security clearance. Applicant's failure to pay or resolve her just debts in accordance with contracts she signed was not prudent or responsible. She has a history of financial problems. Her credit reports, security clearance application, and SOR response listed delinquent debts. Her alcohol consumption is not a circumstance beyond her control and it contributed to her financial woes. From 1992 to August 2006, Applicant engaged in a pattern of alcohol abuse and dependence manifested by seven DWIs. She was correctly diagnosed as alcohol dependent in August 2006.

The rationale for granting or reinstating Applicant's clearance is more substantial. She was forthright and candid in her security clearance application, her responses to DOHA interrogatories, her SOR response, and at her hearing about her financial and alcohol-related problems. Several problems partially beyond her control adversely affected her financial status. Her debts resulted from divorce, unemployment, her spouse's financial irresponsibility, and her medical problems. Of her 19 SOR debts totaling \$37,488, she completely resolved seven SOR debts (two duplications, five paid debts) totaling \$22,186. Five debts totaling \$16,213 are in an established payment plan. She is investigating three debts totaling \$2,312. She credibly promised to resolve her remaining, unresolved debts to be credible. She understands what she must do to maintain her financial responsibility. She paid 10 non-SOR collection accounts totaling \$6,171. Her rent is current and she does not have any car loans or credit cards. I am confident she will keep her promise to avoid future delinquent debt. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

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 has paid off each and

every debt listed in the SOR. All that is required is that an applicant demonstrate that he has ‘ . . . established a plan to resolve his 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 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.

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

Applicant is 40 years old. She has achieved some important educational and employment goals, demonstrating her self-discipline, responsibility and dedication. She acknowledges that she is an alcoholic, and she ended her alcohol consumption in August 2006, except for consuming alcohol once in March 2007. She has attended hundreds of AA sessions, and volunteers at a clinic for alcoholics. Applicant received financial counseling and generated a budget. She is an intelligent person, and she understands what she needs to do to establish and maintain her financial responsibility. There is simply no reason not to trust her. Moreover, she has established a “meaningful track record” of debt re-payment.

Applicant has demonstrated her patriotism and trustworthiness through her service to the Department of Defense as a contractor. Character witnesses described Applicant as professional, honest, and diligent. She is an asset to her employer.

I conclude Applicant has shown sufficient responsibility and rehabilitation to mitigate the alcohol consumption and financial considerations security concerns. 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,”<sup>15</sup> and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. For the reasons stated, I conclude she is eligible for access to classified information.

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<sup>15</sup>See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006)



## **Formal Findings**

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

Paragraph 1, Guideline G: FOR APPLICANT

Subparagraphs 1.a to 1.l: For Applicant

Paragraph 2, Guideline F: FOR APPLICANT

Subparagraphs 2.a to 2.s: For Applicant

## **Conclusion**

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

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MARK HARVEY  
Administrative Judge