



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 08-11834 |
| |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Gregg A. Cervi, Esquire, Department Counsel
For Applicant: *Pro se*

September 30, 2010

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government's security concerns under Guideline G, Alcohol Consumption, and Guideline F, Financial Considerations. His eligibility for a security clearance is denied.

On May 11, 2006, Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP). On March 12, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline G, Alcohol Consumption, and Guideline F, Financial Considerations. DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant's answer to the SOR was dated April 21, 2010. With his answer, he requested that his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on June 11, 2010. The FORM contained documents identified as Items 1 through 12. On June 14, 2010, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on June 22, 2010. His response was due on July 22, 2010. Applicant filed additional information within the required time period. On September 17, 2010, the case was assigned to me for a decision.

Findings of Fact

The SOR contains eight allegations of disqualifying conduct under AG G, Alcohol Consumption, (SOR ¶¶ 1.a., 1.b(1), 1.b(2), 1.b(3), 1.b(4), 1.c., 1.d., and 1.e.) and four allegations of disqualifying conduct under AG F, Financial Considerations (SOR ¶¶ 2.a. through 2.d.). In his Answer to the SOR, Applicant admitted the eight Guideline G allegations, and he admitted three of the four Guideline F allegations (¶¶ 2.a., 2.b., and 2.c.). He denied the SOR allegation at ¶ 2.d. Applicant's admissions are admitted as findings of fact. (Item 1; Item 4.)

The facts in this case are established by the record provided by the Government and by Applicant's response to the FORM. The record evidence includes Applicant's 2006 e-QIP; the FORM from ISCR Case No. 02-13857, dated November 19, 2004¹; the DOHA administrative judge's decision in ISCR Case No. 02-13857, dated February 17, 2005; Applicant's response to DOHA interrogatories concerning alcohol, dated October 15, 2009; Applicant's response to DOHA interrogatories (Adoption of Statement), dated October 15, 2009;² Applicant's medical and alcohol treatment records; Applicant's Chapter 13 bankruptcy records, and a credit bureau report for Applicant, dated February 1, 2010. In his response to the FORM, Applicant provided information about his alcohol consumption, his student loan debt, and his divorce from his second wife. (See Items 5 through 12 and Applicant's response to FORM.)

Applicant is a 44-year-old senior software engineer. From 1987 until 1995, he served in the U.S. military. In 1993, he was awarded a Bachelor of Science degree in computer science. He has worked for his present employer, a government contractor, since 1998. He was first awarded a security clearance in 1996. (Item 5.)

¹ On August 23, 2004, DOHA issued Applicant an SOR. In response to the SOR, Applicant requested an adjudication on the record. DOHA then prepared and served Applicant with the FORM dated November 19, 2004.

² Applicant was interviewed by an authorized investigator from the U.S. Office of Personnel Management (OPM) on July 25, 2008. On October 15, 2009, in response to DOHA interrogatories, Applicant signed a notarized statement affirming that he had read the summary of the interview and found it to be true and correct. He also added information about his abstinence from alcohol, his attendance at meetings of Alcoholics Anonymous (AA), and his church work. Additionally, he enclosed a copy of his 2008 performance evaluation. (Item 9.)

Applicant has been married and divorced twice. He married for the first time in 1991, and he and his wife divorced in 1994. When he married for the second time in 2000, Applicant became the step-father of two children, who are now young adults. Applicant was granted a divorce from his second wife in May 2010. The record does not reflect that children were born to either of Applicant's marriages. (Item 5; Applicant's response to FORM at 3.)

Applicant's father and older brother were alcoholics. Applicant began to consume alcohol in college. His average alcohol consumption was six or seven beers a day. From 1996 until at least August 2007, he consumed alcohol to excess and to the point of intoxication. (Item 1; Item 4; Item 9 at 2; Item 10 at 1.)

In August 2004, DOHA issued Applicant an SOR alleging two alcohol-related incidents and one treatment for alcohol dependence. Applicant requested that DOHA adjudicate his case on the record. A DOHA administrative judge reviewed the FORM in Applicant's case and made the following findings of fact:

Applicant was arrested in November 1996 and charged with Driving Under the Influence (DUI). His blood alcohol levels were .147% and .162%. Applicant was found guilty of DUI, sentenced to one year supervised probation, ordered to attend DUI Counterattack School and participate in a Victim Awareness Program, and to complete 50 hours of community service. He was fined \$492.50, and his driver's license was revoked for six months.

From February 1997 until May 1997, Applicant received outpatient treatment for a condition diagnosed as alcohol dependence.

Applicant was arrested in January 2000 and charged with (1) Driving Under the Influence of Alcohol or Drugs and (2) Driving While Having a .08% or Higher Blood Alcohol Level. Count (1) was dismissed. Applicant was found guilty of Count (2), sentenced to three years unsupervised probation, fined \$1,464, plus court costs, and sentenced to 48 hours in jail. He was also ordered to attend a Driving While Intoxicated (DWI) program, and his driver's license was restricted for 90 days.

Applicant continued to drink intoxicating beverages after he was discharged from the program in which he had been treated for alcohol dependence in 1997.³

(Item 6; Item 7)

³ Applicant completed Basic Outpatient Substance-Abuse Treatment on May 28, 1997. His discharge diagnosis was "Alcohol Dependence, (in apparent remission)." His prognosis was good, provided he followed treatment recommendations to abstain from all mood-altering substances and attend AA meetings. (Item 6.)

In his response to the FORM, Applicant objected to the SOR allegation that he continued to abuse alcohol and, by letter dated November 11, 2004, he provided the following information to the administrative judge:

I am not sure how to put this, but I have made many positive changes in my life since February 2002. During the months of February and March of 2002, I really woke up, when my wife and stepchildren confronted me with my drinking problem. I started going to a local church . . . where I live. I spoke with the pastor and he mentioned it would be a good idea to start attending [AA] meetings. At first I was scared, but when I stepped into the AA doors I realized for the first time that I needed this. After a few meetings, I spoke up and got me a sponsor. A sponsor is a person that had a drinking problem at sometime in his life. He really helps me if I get the urge to drink. I have been in the AA program for over two years now. This has changed my life. I spend my nights at home with my family, and we have dinner together, and it's a joy. I also take time with my stepchildren now, and they love me. I go to my kid's games and events now.

(Item 6 at 5.)

The administrative judge weighed all of the evidence in light of the applicable adjudicative guideline and the whole-person standard. In February 2005, he granted Applicant a security clearance. (Item 6; Item 7.)

In early August 2007, Applicant visited his parents and other family members in a neighboring state. His father had suffered a stroke, and his mother was in hospice care. Applicant felt stress because of his parent's illnesses. His relatives were heavy drinkers, and Applicant felt social pressure to join them in drinking alcohol. Applicant drank alcohol with his relatives every day for a week. At the end of the week, he realized he could not stop drinking by himself, and he sought medical help. (Item 9 at 2.)

When he presented himself for treatment at a hospital, he was transferred by ambulance to a mental health and chemical dependency facility. His diagnosis at admission was Bipolar Disorder. His diagnosis by a physician at the hospital after evaluation was, in part, alcohol dependence. He was treated at the facility in August 2007. He was treated at the facility also from December 2007 until January 2008. (Item 9 at 2; Item 10 at 12, 20.)

Clinical notes from the mental health and chemical dependency facility report that Applicant's Bipolar Disorder was treated with medication. In designing an individualized treatment plan for Applicant, an interdisciplinary team of mental health professionals identified Applicant's assets and strengths as "motivated for treatment" and "able to benefit from [treatment] milieu." They identified his stressors or weaknesses as "poor coping skills," financial difficulties," and "substance abuse." (Item 9 at 4; Item 10 at 15, 25.)

In discussing his alcohol consumption, Applicant stated that he had used alcohol since 1987. He stated that consequences of his excessive alcohol use were compulsive spending, arguments with his wife about his alcohol use, two DUIs, blackouts, and work-related stress. (Item 10 at 26.)

After completing inpatient care, Applicant was provided with a discharge plan that included out-patient therapy, group aftercare, participation in a 12-step recovery group, and medication management. Clinical notes in the record reflect that Applicant was treated at a family psychiatry practice and saw a psychiatrist for therapy from about September 2007 until May 2009. (Item 10 at 8, 29-30.)

When he was interviewed by an authorized investigator from the Office of Personnel Management (OPM) in July 2008, Applicant stated that he intended never to use alcohol in the future. He further stated that his judgment was affected negatively when he drank alcohol. He said his return to alcohol use in August 2007 was an isolated incident. (Item 9 at 2-4.)

In his October 15, 2009 response to DOHA interrogatories, Applicant reported that he had not drunk alcohol since August 2007. He also stated that he attended AA meetings "almost every day," had an AA sponsor, and was involved in his church. Applicant also provided a copy of his 2008 performance evaluation. The performance evaluation reflected that he was a valued employee who carried out his assignments and met his employer's expectations. (Item 9 at 7-15.)

The SOR alleges under Guideline F that Applicant has filed for bankruptcy protection three times. In February 1995, he filed for Chapter 7 bankruptcy; his debts were discharged in bankruptcy in May 1995. (SOR ¶ 2.a.) Seven years later, in March 2002, Applicant filed again for Chapter 7 bankruptcy protection, and that bankruptcy was discharged in July 2002. (SOR ¶ 2.b.) In April 2008, Applicant and his wife filed for Chapter 13 bankruptcy protection; and that bankruptcy case was closed in January 2010. (SOR ¶ 2.c.) The SOR also alleges that Applicant is responsible for delinquent student loan debts totaling approximately \$22,313. (SOR ¶ 2.d.) Applicant admitted the three bankruptcies but denied the student loan delinquencies. (Item 1; Item 4; Item 11; Item 12.)

In a July 2008, interview with an OPM investigator, Applicant stated that he filed Chapter 13 bankruptcy because his wife incurred large balances on her eight credit cards, and, because she had a low income, they were unable to pay the credit card debts. He stated he was paying the bankruptcy trustee \$612 a month and would continue these monthly payments for five years. Applicant took an on-line course in credit counseling before filing for bankruptcy. (Item 9.)

Applicant's Chapter 13 bankruptcy documents establish that Applicant's petition for bankruptcy was confirmed in July 2008. He reported assets of \$160,397 and liabilities of \$221,690. His total non-priority unsecured debt was \$70,909. He proposed to pay the trustee \$685 a month for 60 months, for a total of \$41,100. The payment plan

was modified in June 2009 to reflect five monthly payments of \$175 to the trustee, beginning July 1, 2009, and thereafter \$275 a month for 41 months for a new plan base amount of \$21,740. The modification was sought to cure plan arrears to the trustee, to modify treatment for home mortgage and automobile secured claims after Applicant's surrender of collateral with no further payments due, and to reflect changed income and expenses. (Item 11.)

On December 7, 2009, the trustee submitted a final report and account. He reported \$10,042 paid by or on behalf of the debtor. Of that amount, \$2,772.61 was identified as expenses of administration, and \$7,269.39 was disbursed to creditors. On January 14, 2010, a United States bankruptcy judge signed an order discharging the standing trustee, terminating further liability on bond, and closing Applicant's Chapter 13 case. (Item 11.)

Applicant reported a gross monthly income of \$7,078.40 and payroll deductions of \$1,867.86, for a net monthly income of \$5,210.54. His wife reported \$700 in monthly income. Together, Applicant and his wife reported a net monthly income of \$5,910.54. (Item 11.)

Applicant reported the following monthly expenses: rent or home mortgage⁴, \$1,040; electricity and heating oil, \$200; water and sewer, \$90; cell phone, internet, and cable, \$350; food, \$350, clothing, \$75; laundry and dry cleaning, \$150; medical and dental expenses, \$200; recreation, clubs and entertainment, newspapers, magazines, \$400; automobile, \$90; alimony, maintenance, and support paid to others, \$1,100; and attorney fees, \$1,000. His net monthly remainder is \$165.54. (Item 11.)

Applicant filed a response to the FORM dated August 23, 2010. He denied that his student loans were in delinquent status. He stated that he was paying his student loans through his Chapter 13 payment plan. He provided a document showing that his student loans totaled \$26,018 and entered repayment status in September 1994. As of July 31, 2010, Applicant owed an outstanding principal student loan balance of \$22,308 and an outstanding interest balance of \$3,670.⁵ (Applicant's response to FORM at 1-2.)

Applicant's documentation established that his student loans were in repayment status as of September 15, 1994; in forbearance status as of October 7, 2003; in repayment status as of May 19, 2004; in forbearance status as of July 20, 2007; in repayment status as of February 19, 2008; and stayed by his Chapter 13 bankruptcy filing, active as of May 30, 2008. Applicant's documentation does not establish that payments were made on his student loans by the bankruptcy trustee. (Applicant's response to FORM at 2; Item 11; Item 12.)

⁴ Applicant's wife reported that she paid \$700 each month in rent or in a mortgage payment. (Item 11.)

⁵ The document provided by Applicant contained small print which was difficult to read, which may explain why the outstanding principal balance and the outstanding interest balance do not appear to equal the total student loan amount. (Applicant's response to FORM at 2.)

In his August 23, 2010 response to the FORM, Applicant stated:

All of my financial problems have been brought forward from my wife getting credit cards in her name without telling me and other items. This caused me to file bankruptcy twice. To resolve this situation, I have divorced her. I am up to date with my chapter 13 and I always paid my credit debts, it was all of her credit cards. My credit reports will show this.

(Response to FORM at 1.)

Applicant provided for the record a copy of a judicial order granting him a divorce from his wife. The order is dated May 4, 2010. (Response to FORM at 3.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that “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.

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching 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 in seeking 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 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, risks 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 G, Alcohol Consumption

Guideline G, Alcohol Consumption, applies in this case to a determination of eligibility for access to classified information. Under Guideline G, “[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.”

The following conditions could raise disqualifying security concerns under ¶ 22 of the alcohol consumption adjudicative guideline:

- (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 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.

I have considered all of the disqualifying conditions under AG ¶ 22. Applicant consumed alcohol to excess and at times to intoxication from 1996 to at least August 2007. In 1996, he was arrested, charged, and found guilty of DUI. From February 1997 until May 1997, he was treated in an alcohol treatment program for a condition diagnosed as alcohol dependence. After completing the treatment program, he continued to consume alcohol, and in January 2000, he was arrested and found guilty of driving while having a blood alcohol level of .08% or higher. In August 2007, he consumed alcohol with family members for a week, and when he realized he could not stop drinking alcohol on his own, he sought admission to a hospital for treatment. Upon admission, he was diagnosed as alcohol dependent and treated. Later, he continued his treatment for alcohol dependence at the hospital from December 2007 until January 2008. Additionally, he was under psychiatric care and treated for his alcohol dependence from September 2007 until at least May 2009. I conclude that AG ¶¶ 22(a), 22(c), 22(d), and 22(f) apply to the facts in this case.

The Guideline G disqualifying conduct could be mitigated under AG ¶ 23(a) if “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.” The disqualifying conduct could also be mitigated under AG ¶ 23(b) if “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).” If “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,” then AG ¶ 23(c) might apply. Finally, mitigation might be possible under AG ¶ 23(d) if “the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as

participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.”

Applicant was found guilty of a DUI in 1996. He was diagnosed as alcohol dependent in 1997 and completed outpatient treatment. He continued to consume alcohol, and three years after completing his outpatient treatment, he was arrested and found guilty of driving with a .08% or above blood-alcohol level. His letter of November 11, 2004, in response to the FORM he was sent by DOHA in October 2004, suggests that he continued to consume alcohol until at least February and March 2002, when his wife and step-children confronted him about his drinking problem.

After this confrontation, Applicant, to his credit, sought help for his alcohol dependence. He joined AA, obtained a sponsor, and became active in a church. He became involved in the life of his family. In light of his apparent rehabilitation, he was granted a security clearance.

However, three years later, Applicant felt stress while visiting his parents, both of whom were seriously ill, and he drank alcohol every day for a week. He again sought and received treatment for his alcohol dependence. He is again in AA, has a sponsor, and seeks to permanently abstain from alcohol use. He claims he has not used alcohol since August 2007.

Applicant’s excessive use of alcohol spans a period of at least eleven years and is habitual. He acknowledged that his alcohol use impairs his judgment while it also relieves his stress. Twice, after treatment for alcohol dependence, Applicant returned to the use of alcohol. His relapses have occurred at intervals of about three years, despite his active participation in AA, making the possibility of future alcohol use likely at this time. Under these circumstances, I conclude that insufficient time has passed to demonstrate that Applicant’s use of alcohol is unlikely to recur. I conclude that none of the Guideline G mitigating conditions fully applies to the facts of Applicant’s case.

Guideline F, Financial Considerations

The Guideline F security concern is set out in AG ¶ 18:

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

The guideline notes several conditions that could raise security concerns in this case. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially

disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. AG ¶ 19(f) reads: “financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern.”

Applicant has a history of financial delinquency. In his alcohol treatment, he stated that his drinking resulted in financial problems and compulsive spending. In 1995, 2002, and 2008, Applicant’s failure to pay his creditors and satisfy his financial obligations led him to seek protection from his creditors through bankruptcy. With his first Chapter 7 bankruptcy discharge, Applicant received a fresh start in his financial life, and there was the possibility that he would acquire financial discipline and avoid the financial overextension that caused his debts to overwhelm him. However, this did not happen, and by 2002, Applicant again had so many debts that he filed for Chapter 7 bankruptcy again. Six years later, in 2008, Applicant’s repeated indebtedness led him to file for Chapter 13 bankruptcy. After three bankruptcies, he failed to satisfy the student loans he incurred in 1994. From 1998 to the present, Applicant had steady and lucrative employment with one employer. I conclude that AG ¶¶ 19(a), 19(c), and 19(f) apply to the facts in Applicant’s case.

Guideline F also includes conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s financial delinquencies. Unresolved financial delinquency might be mitigated if it “happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment.” (AG ¶ 20(a)). Additionally, unresolved financial delinquency might be mitigated if “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.” (AG ¶ 20(b)). Still other mitigating circumstances that might be applicable include evidence that “the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control” (AG ¶ 20(c)) or “the individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts” (AG ¶ 20 (d)). Finally, security concerns related to financial delinquencies might be mitigated if “the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.” (AG ¶ 20 (e)).

Applicant has a history of financial delinquencies that dates to at least 1995. Despite resolving some of his debts through Chapter 13 bankruptcy, and despite a gross annual salary of approximately \$84,000, he continues to owe over \$22,313, plus interest, in student loans which he incurred in 1994. His delinquencies are recent and on-going. They have occurred under circumstances that are likely to recur.

Applicant has been steadily employed with his current employer since 1998. He stated that his financial delinquencies resulted from his wife’s spendthrift behavior, but

he failed to provide documentation to establish that his wife, and not he, was responsible for the debts that led to his 2002 and 2008 bankruptcies. The record does not support a conclusion that his failure to satisfy his creditors is the result of circumstances beyond his control. Applicant's financial counseling was limited to an on-line course he took before filing for his most recent bankruptcy. His net monthly remainder is \$165, suggesting that an unexpected expense could cause him to fall behind.

In determining an individual's security worthiness, the Government may consider his or her financial history. The discharge or partial resolution of an applicant's debts in bankruptcy "does not immunize the applicant's history of financial problems from scrutiny for its security significance." ISCR Case No. 98-0156 at 2 (App. Bd. November 12, 1998.) Applicant's reliance upon consecutive bankruptcies as a tool for resolving financial delinquency raises concerns about his trustworthiness and reliability. I conclude that none of the financial considerations mitigating conditions fully applies to the facts of Applicant's case.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all relevant 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has battled alcohol dependence for many years. Unfortunately, he relapsed after participating in two alcohol treatment programs, thereby causing security concerns about his ability to protect classified information. Insufficient time has elapsed since his last relapse to conclude that he can abstain from alcohol use in the future.

Applicant has a history of financial delinquencies which arose in part from his excessive use of alcohol. He blamed his second wife for the financial delinquencies that

caused him to petition for bankruptcy in 2002 and 2008, and he provided documentation to show that he had divorced his second wife in May 2010. He failed to establish that the financial delinquencies were primarily the consequence of his wife's actions. Moreover, he provided no documentation to show a plan to pay his debts and remain solvent in the future. After three bankruptcies in 13 years, Applicant must establish a track record of financial responsibility before the Government can have confidence in his judgment and reliability.

Overall, the record evidence leaves me with serious doubts about Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from his alcohol consumption and financial delinquencies.

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:

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| Paragraph 1, Guideline G: | AGAINST APPLICANT |
| Subparagraph 1.a.: | Against Applicant |
| Subparagraphs 1.b(1) - 1.b(4): | Against Applicant |
| Subparagraphs 1.c. - 1.e.: | Against Applicant |
| Paragraph 2, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 2.a. - 2.d.: | 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.

Joan Caton Anthony
Administrative Judge