



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-02180
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Alison O'Connell, Esq., Department Counsel  
For Applicant: Dana D. Jacobson, Esq.

May 10, 2011

**Decision**

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HEINY, Claude R., Administrative Judge:

In 2007 and 2008, Applicant was arrested for alcohol-related incidents. He is currently on concurrent, four-year terms of probation, which do not end until July 2012. In February 2010, he became intoxicated. Additionally, he has 36 delinquent accounts totaling approximately \$24,000 that remain unpaid. Applicant has failed to rebut or mitigate the security concerns under criminal conduct, alcohol consumption, and financial considerations. Clearance is denied.

**Statement of the Case**

Applicant contests the Defense Department's (DoD) intent to deny his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued a Statement of

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<sup>1</sup> Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

Reasons (SOR) on June 24, 2010, detailing security concerns under Guideline J, criminal conduct, Guideline G, alcohol consumption, and Guideline F, financial considerations.

On August 16, 2010, Applicant answered the SOR and requested a hearing. On November 15, 2010, I was assigned the case. On November 17, 2010, DOHA issued a Notice of Hearing for the hearing held on November 30, 2010. At the hearing, the Government offered exhibits (Ex.) 1 through 12, which were admitted into evidence without objection. Applicant testified and submitted exhibits A through I, which were admitted into evidence without objection. The record was held open to allow Applicant to submit additional information, which was received on December 3, 2010, and admitted into the record as Exhibits L through Y. On December 8, 2010, DOHA received the hearing transcript (Tr.).

### **Findings of Fact**

In Applicant's Answer to the SOR, he denied four debts and could not admit or deny another debt. He admitted the remaining allegations, some with explanations. I incorporate as findings of fact Applicant's admissions to the SOR allegations. After a thorough review of the record, pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 47-year-old computer technician who has worked for a defense contractor since December 1996. He is seeking to obtain a security clearance. Applicant called no witnesses other than himself. He produced a number of letters of recommendation and e-mails related to his duty performance. The base director of communications states Applicant's work is nothing less than stellar and is an example for others to follow. (Ex. H) The director has received numerous calls, letters, and e-mails (Ex. L through Y) praising Applicant's duty performance. The company's site manager states Applicant has earned praise for his work, performance, and conduct on the job as well as for his trustworthiness and reliability. (Ex. B) His duty performance has resulted in numerous awards. (Ex. K)

### **Alcohol Consumption**

From June 2007 through November 2010, Applicant was seen by a mental health group for chronic mood problems. (Tr. 33) Treatment was court ordered as part of his deferred adjudication and probation. (Tr. 65) Starting after high school, Applicant suffered from depression, anger, and poor financial management. (Ex. 6) He abused alcohol, on and off, but, as of January 2010, was doing well. He has been diagnosed as bipolar. In February 2010, he was diagnosed with moderate recurrent major depression, alcohol dependence, and suffering from attention deficit hyperactivity disorder. (Ex. 6)

In 2007, Applicant started voluntary, once-a-month counseling and has abstained from drinking. (Tr. 34) In December 2007, he drank a large amount of beer, became intoxicated, and went to the emergency room. (Tr. 36, 73) Nurses' notes indicate he had

16 12-ounce beers in a 12-hour period. (Tr. 114, Ex. 6) He asked for and was sent to an inpatient-detoxification facility where he stayed for two days. (Tr. 37) Applicant admitted he has gone to detoxification three times. (Tr. 67) He also acknowledged he stopped drinking for a seven-year period during the 1980's. (Tr. 72)

In February 2010, Applicant had a relapse and resumed drinking for a couple of days before going to the emergency room and requesting to be checked in for detoxification. (Tr. 75) This period of drinking violated his probation. (Tr. 77)

### **Criminal Conduct**

In December 2007, Applicant was arrested for burglary, a second degree felony. (Ex. 2) Applicant's sister-in-law, his wife's sister, had come to his house demanding he repay \$600 his wife had borrowed. (Tr. 39, Ex. 7) He was upset because he was being asked to repay money he had not borrowed. He believed it was his wife's responsibility to repay the money she had borrowed. (Tr. 43) About an hour after his sister-in-law returned to her home, he went to her home, which was two blocks away. (Tr. 39) It was common that he and his wife would enter his sister-in-law's home without knocking and she would do the same at their home.

Applicant was very intoxicated. He and his sister-in-law became involved in a family quarrel over the money, which escalated into a physical confrontation. When his sister-in-law threatened to call the police, he took her cell phone. (Tr. 43) He also destroyed the telephones in the kitchen and bedroom. (Ex. 7) When his mother-in-law, age 66, tried to intervene, he pushed her out of the way. The following day, he turned himself into the police. (Tr. 45)

Applicant takes full responsibility for his actions. He was charged with burglary of a habitation and injury to elderly. (Ex. 7, 8, 10, and 11) He pleaded guilty and received a deferred judgment. (Ex. 2, 9a, and 9b) He was placed on two, four-year deferred probations for burglary and injury to the elderly. Both probations run concurrently. They started in June 2008 and will end in July 2012. (Ex. 2) Applicant also was ordered to attend an anger management class, pay \$4,000 in court costs and fees, submit to drug evaluation and urinalysis, and complete 300 hours of community service. He has completed his community service, anger management class, and is currently attending monthly counseling. (Ex. 1) He makes \$200 monthly payments on the court costs and fees. His probation officer indicates Applicant has always been cooperative. (Ex. 1)

In January 2008, another family argument occurred. He had promised to stop drinking, but was drinking that day. He pushed his wife and pushed over the entertainment center. She had his father come over. His father called the police and Applicant was arrested for a Class C assault. (Tr. 48, 85) He spent the night in jail. When the matter went to court, he was sentenced to time served. (Tr. 49)

Applicant asserts his support group is the people at his church. (Tr. 108) He last attended Alcoholics Anonymous (AA) meetings three or four years ago. (Tr. 110) He is

currently on medication for his depression and doing well. (Tr. 110) He believes he has control over his anger after attending the eight-hour anger management course. (Tr. 111)

## **Financial Considerations**

In March 1991, Applicant divorced his second wife. In May 1990, his son was born. Applicant asserts his wife kept returning to court asking that the child support be increased, which was granted. (Tr. 51) He was working at the same installation where he currently works, but was working for a different contractor. His child support payments led to financial problems. In June 2001, Applicant filed for Chapter 7 bankruptcy protection. (Ex. 12) He listed assets of approximately \$35,000 and liabilities of approximately \$57,000. His net monthly income at the time of filing was \$2,230. His annual salary for 1999 had been approximately \$37,000, and his annual salary for 2000 had been approximately \$33,000. (Ex. 12) Shortly after his debts were discharged, new debts began to become delinquent. (Tr. 91)

The SOR lists 41 charged-off and collection accounts. Applicant has admitted owing all but four of the debts. The delinquent debts he has admitted total in excess of \$24,000. He asserts none of these delinquent accounts were incurred after June 2007, when he started his alcohol-related treatment. (Tr. 57)

Applicant submitted 38 pages of medical bills. (Tr. B) He asserted his employer provides medical insurance and he believes some of these expenses should be covered by his health insurance. (Tr. 122) He has contacted his company concerning the medical debts. He asserts 13 of his creditors have agreed to settle their accounts with him for 30% to 60% of what he owes. He provided no documentation stating which creditor made the offers and provided no documentation about the repayment agreements, other than his hand-written notation. (Ex. A) He asserts he will start making payments on these delinquent accounts "very, very soon." (Tr. 54) He hopes to have his debts paid within one year. (Tr. 55)

The creditor of a \$1,310 charged-off account (SOR 3.pp) offered to settle for \$252 if paid by August 17, 2010; to settle for \$458 if paid by August 23, 2010; or \$655 if paid by August 31, 2010. No money was paid during August 2010. On September 1, 2010; October 1, 2010; and November 1, 2010, Applicant made payments of \$90.36 each. There is no documentation showing this debt has been settled and paid.

Applicant stated he had insufficient information to either admit or deny a \$1,065 debt (SOR 3.ii). He denied four accounts (SOR 3.g, \$333; 3.k, \$145; 3.o, \$88; and 3.r, \$63) with a collection agency, but admits owing other accounts with this same collection agency. On November 1, 2010, approximately a month before his hearing, Applicant arranged preauthorization of payment to the collection agency for eight accounts totaling approximately \$900. (Ex. D) On November 15, 2010, a \$25 attachment was taken from his bank account and sent to this creditor. (Ex. E)

In 2003, Applicant remarried. He has four children ages, 8, 14, 21, and 27. (Tr. 63) His two youngest are from his current marriage and live with him. His child support obligation on his two older children has ended. He has been employed on base since 1993. (Tr. 64) His annual salary is \$49,000. (Tr. 65) His wife's annual salary is \$18,000 as a nurse's aid. (Tr. 65) He has no credit cards. (Tr. 56) He is current on his \$900 monthly house payment and his \$600 car payment for a 2006 Toyota. (Tr. 94) Following the payment of his monthly expenses, he has about \$139 in disposable income. (Tr. 97)

A summary of Applicant's judgment, accounts charged off, accounts placed for collection, and other unpaid obligations and their current status follows:

	Creditor	Amount	Current Status
a	June 2001 Chapter 7 bankruptcy.		Debts, other than his child support obligation, were discharged.
b	Charged-off credit card account.	\$1,249	Unpaid. Applicant has not contacted the creditor. (Tr. 55)
c	Charged-off credit card account.	\$1,185	Unpaid. Applicant has not contacted the creditor. (Tr. 55)
d	Charged off credit card account.	\$1,144	Unpaid. Applicant has not contacted the creditor. (Tr. 55)
e	Charged-off jewelry account.	\$426	Unpaid. Applicant has not contacted the creditor. (Tr. 55)
f	Charged-off loan account.	\$53	Paid. (Ex. C)
g	Collection agency collecting for medical services.	\$333	Paying. Applicant denies this debt is in his name. However, he has arranged to make \$25 monthly payments on eight debts with this collection agency.
h	Collection agency collecting for medical services.	\$222	Unpaid.
i	Collection agency collecting for medical services.	\$156	Unpaid.
j	Collection agency collecting for medical services.	\$145	Unpaid.
k	Collection agency collecting for medical services.	\$145	Paying. Applicant has arranged to make \$25 monthly payments to this collection agency.
l	Collection agency collecting for a medical collection account.	\$100	Unpaid.
m	Collection account.	\$98	Unpaid.

	Creditor	Amount	Current Status
n	SOR does not list 1.n.		
o	Collection agency collecting for medical services.	\$88	Paying. Applicant has arranged to make \$25 monthly payments to this collection agency.
p	Collection agency collecting for a medical collection account.	\$75	Unpaid.
q	Collection agency collecting for medical services.	\$66	Unpaid.
r	Collection agency collecting for medical services.	\$163	Paying. Applicant has arranged to make \$25 monthly payments to this collection agency.
s	Collection agency collecting for a medical collection account.	\$54	Unpaid.
t	Collection agency collecting for a medical collection account.	\$50	Unpaid.
u	Medical services collection account.	\$290	Unpaid.
v	Medical services collection account.	\$159	Unpaid.
w	Collection agency collecting for a automobile credit company.	\$13,171	Unpaid.
x	Medical services collection account.	\$100	Unpaid.
y	Medical services collection account.	\$75	Unpaid.
z	Medical services collection account.	\$423	Unpaid.
aa	Medical services collection account.	\$100	Unpaid.
bb to hh	Seven medical services collection accounts of \$75 each.	\$525	Unpaid.
ii	Charged-off bank account.	\$588	Unpaid.
jj	Medical services collection account.	\$319	Unpaid.
kk	Collection account.	\$694	Unpaid.
ll	Collection account.	\$1,065	Unpaid. Applicant stated he was unable to admit or deny this debt.

	Creditor	Amount	Current Status
m m	Medical services collection account.	\$424	Unpaid.
nn	Medical services collection account.	\$34	Unpaid.
oo	Medical services collection account.	\$517	Unpaid.
pp	Charged-off credit account.	\$1,310	Applicant made three payments on this debt. (Ex. F)
qq	Charged-off account.	\$659	Unpaid.
	Total debt listed in SOR	\$26,105	He admitted to delinquent debts totaling \$24,410.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's 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 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 of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination of 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 J, Criminal Conduct**

AG ¶ 30 expresses the security concern pertaining to criminal conduct: “Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.”

AG ¶ 31 describes three conditions that could raise a security concern and may be disqualifying in this case:

- (a) a single serious crime or multiple lesser offenses;
- (d) individual is currently on parole or probation; and
- (e) violation of parole or probation, or failure to complete a court-mandated rehabilitation program.

In December 2007, Applicant was arrested, later pled guilty to burglary of a habitation, a second degree felony, and was placed on two, four-year probations, which do not end until July 2012. (Ex. 2) Applicant was also ordered to attend anger management counseling, pay \$4,000 in court costs and fees, submit to a drug evaluation and urinalysis, and complete 300 hours of community service. In January 2008, another family argument occurred resulting in arrest for a Class C assault. He was sentenced to time served for that incident. The facts established the disqualifying conditions in AG ¶¶ 31(a), 31(d), and 31 (e).

AG ¶ 32 provides two conditions that could potentially mitigate the security concerns:



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

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

None the mitigating conditions apply. There has been the passage of time without recurrence of criminal activity and Applicant has an excellent employment record. His last arrest occurred approximately three years ago. Since that arrest, he has continued with his therapy and has decided to abstain from alcohol. His current medication appears to be having a positive effect on his depression. The passage of time since the events is a factor to be considered. However, the passage of time, in and of itself, is not the controlling factor. The nature and relevant circumstances surrounding the conduct must also be considered.

In February 2010, Applicant violated his probation when he drank to the point of intoxication resulting in emergency room assistance. Because his last intoxication, which violated his probation, occurred less than a year ago, I find his criminal behavior to be recent. There is nothing in the record to suggest his arrests or his most recent intoxication happened under such unusual circumstances that they are unlikely to recur. These events cast doubts on his reliability, trustworthiness, and good judgment. The mitigating conditions in AG ¶ 32(a) do not apply.

Applicant attended an anger management class, has made the decision to abstain from alcohol use, has completed community service, and continues to receive counseling, all of which are aspects of Applicant's rehabilitation. Because he remains on probation, it is too soon to conclude that continuation or recurrence of his criminal conduct is unlikely. Until his probation ends, I cannot conclude the mitigating condition in AG ¶ 32(d) applies. I find against Applicant on this concern.

### **Alcohol Consumption**

AG ¶ 21 expresses the security concern pertaining to alcohol consumption, "Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness."

AG ¶ 22 describes three conditions that could raise a security concern and may be disqualifying:

(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;

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

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

AG ¶ 22 (a) applies due to alcohol-related incidents away from work including: the alcohol related 2007 arrest, the 2008 assault arrest, and consuming alcohol to the point of intoxication in February 2010, resulting in an emergency room visit. AG ¶ 22 (e) applies because he was diagnosed as alcohol dependent. AG ¶ 22 (f) applies because, before his most recent emergency room visit for intoxication, he had been treated twice before for detoxification.

AG ¶ 23 provides four conditions that could mitigate alcohol consumption security concerns:

(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.

None of the mitigating conditions apply. Applicant's last abuse of alcohol is recent and violates his probation. Applicant's last intoxication, coupled with the history

of prior alcohol-related incidents, treatments, and relapses precludes application of AG ¶¶ 23(a) and 23(b).

Applicant continues to attend monthly counseling sessions, which started in June 2007. Since counseling started, he has been arrested twice for alcohol-related incidents and was intoxicated to the point of needing emergency room assistance. Applicant has been admitted to detoxification three times and had stopped drinking for seven years during the 1980's. The mitigating condition listed in AG ¶ 23(c) does not apply.

The mitigating condition listed in AG ¶ 23(d) does not apply. Even though he attends monthly counseling, he has abused alcohol to the point of intoxication. He has not successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, nor has he demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations. He last participated in AA three or four years ago, which was before his arrests and most recent intoxication. There is no 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.

It has been less than a year since Applicant's last intoxication. Considering the two arrests, a seven-year period of abstinence in the 1980's, and that he has undergone detoxification three times, it is too soon to be able to safely predict that another relapse will not occur. The risk of even the inadvertent compromise of classified material in the event of another relapse is too great to permit a finding that Applicant has mitigated the alcohol consumption security concerns that exist.

## **Guideline F, Financial Considerations**

AG ¶ 18 articulates the security concerns 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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is

inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant has a history of financial problems. In 2001, he had to resort to bankruptcy protection. Shortly after his debts were discharged in that bankruptcy, he began accumulating new debts which are now delinquent. He has 36 delinquent accounts totaling in excess of \$24,000, which he admitted owing. A number of the delinquent debts are relatively small; five total approximately \$200 or less and twenty more are each \$100 or less. Even the smallest delinquent SOR debt of \$34 remains unpaid. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

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 been employed since 1993. His annual salary is \$49,000 and his wife's annual salary is \$18,000. His monthly disposable income, following the payment of his monthly expenses, is about \$140. He has no credit cards and is current on his monthly house payment and his \$600 2006 Toyota car payment.

Applicant asserted 13 of his creditors were willing to settle their accounts. However, he provided no documentation establishing the repayment agreements and, more importantly, he has yet to start making payment on the settlement offers. He wants to start making payments on his delinquent accounts soon and hopes to have his

debts paid within one year. However, he failed to explain how he will pay off \$24,000 in delinquent obligations with his monthly disposable income of approximately \$140. It appears Applicant will be unable to address his financial problems in the near future.

Applicant meets none of the mitigating factors for financial considerations. Applicant's delinquent debts are numerous, ongoing, and remain unpaid. His continuing delinquent debts constitute a "continuing course of conduct." ISCR Case No. 087-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)).

Applicant failed to provide proof that he maintained contact with his creditors, that he made adequate efforts to set up payment plans, or provide proof he has taken timely efforts to resolve his delinquent debts. He has not acted responsibly in addressing his debts. I find AG ¶ 20(a) does not apply.

The mitigating condition listed in AG ¶ 20(b) does not apply. His financial problem do not appear to be caused by factors beyond his control such as loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation. He has been employed continuously since 1993. His divorce occurred more than ten years ago, and his 2001 bankruptcy discharged any debts, except for child support, arising from that marriage. A number of the debts are medically related. His company provides health insurance and he contacted his company about possible payment of these medical bills. Twenty-two of the delinquent medical accounts were for amounts of approximately \$150 or less. The record fails to support these medical bills were the result of an unexpected medical emergency.

Applicant asserts none of his delinquent accounts were incurred after June 2007. However, they remain unpaid and as such are considered recent. He has received no credit or financial counseling, nor has he demonstrated that his financial problems are under control, or that he has a viable plan to bring them under control. The mitigating condition listed in AG ¶ 20(c) does not apply.

Applicant says he wants to pay his debt. However, there is no evidence of a good-faith effort to satisfy his debts. Good-faith requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. To date, Applicant has shown little effort to address his delinquent accounts. He has paid one creditor \$271 and made a single \$25 payment to a collection agency. I find his preauthorization and payments to be a good-faith effort to repay this creditor. AG ¶ 20(s) applies to these two creditors.

The mitigating condition listed in AG ¶ 20(e) does not apply. Applicant admitted the majority of his delinquent debt. He did state he had insufficient information to admit or deny one account and four other accounts were not his. For AG ¶ 20(e) to apply Applicant must not only deny the debt, also but must provide documented proof to substantiate any reasonable basis of the dispute. He provided no documentation.

## Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all 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 been employed with his current employer since December 1996. He has outstanding duty performance. Evidence of good character is relevant and material under the whole-person concept. However, an applicant's technical expertise (or lack thereof) is not a measure of whether the applicant demonstrates the high degree of judgment, reliability, and trustworthiness that must be possessed by persons entrusted with classified information. In deciding whether to grant or continue access to classified information, the Government must consider whether an applicant's conduct and circumstances pose a risk of deliberate or inadvertent disclosure of classified information. An applicant's technical expertise and contributions to defense programs do not make the applicant less likely to deliberately or inadvertently disclose classified information; and an applicant's lack of technical expertise and absence of any contribution to defense programs do not make the applicant more likely to deliberately or inadvertently disclose classified information. See ISCR Case No. 01-19878 at p.3 (App. Bd. October 29, 2002). ISCR Case No. 02-04237 at p.3 (App. Bd. August 12, 2003).

Applicant was arrested in 2007 and 2008 for alcohol-related incidents and remains on probation until July 2012. Considering the totality of the circumstances, it is too soon to conclude that continuation or recurrence of his criminal conduct or alcohol problems are unlikely.

The issue is not simply whether all of Applicant's debts have been paid – they have not – it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1).) In 2001, Applicant's debts were

discharged. He has delinquent debt of approximately \$24,000 and only \$140 monthly disposable income to devote to the payment of this debt.

In the five months between the SOR and the hearing, Applicant paid less than \$300 on his delinquent debt. He has 20 delinquent accounts that are each \$100 or less. Even the smallest delinquent debt of \$34 remains unpaid. His inability to address even these smaller delinquencies raises a concern about his fitness to hold a security clearance.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from his criminal conduct, alcohol consumption, and financial considerations. A clearance at this time is not warranted.

### **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, Criminal Conduct:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Paragraph 2, Alcohol Consumption:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Financial Considerations:	AGAINST APPLICANT
Subparagraphs 3.a – 3.f:	Against Applicant
Subparagraph 3.g:	For Applicant
Subparagraphs 3.h and 3.j:	Against Applicant
Subparagraph 3.k:	For Applicant
Subparagraphs 3.l and 3.m:	Against Applicant
Subparagraph 3.n:	The SOR contains no paragraph 3.n.
Subparagraph 3.o:	For Applicant
Subparagraphs 3.p and 3.q:	Against Applicant
Subparagraph 3.r:	For Applicant
Subparagraphs 3.s – 3.oo:	Against Applicant
Subparagraph 3.pp:	For Applicant
Subparagraph 3.qq:	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.

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CLAUDE R. HEINY II  
Administrative Judge