



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-05533

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel
For Applicant: *Pro se*

June 3, 2011

Decision

HARVEY, Mark, Administrative Judge:

Applicant's debts were discharged under Chapter 7 of the Bankruptcy Code in January 2004, and the statement of reasons (SOR) lists 11 delinquent debts totaling \$9,635. He made sufficient progress resolving his 11 SOR debts, and financial considerations concerns are mitigated at this time. He had three incidents resulting in three convictions for driving while intoxicated by alcohol (DUI), and his most recent DUI was on May 13, 2010. Alcohol consumption concerns are not mitigated and eligibility for access to classified information is denied.

Statement of the Case

On February 9, 2010, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance application (SF 86) (GE 1). On October 28, 2010, 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guideline F (financial considerations). (Hearing Exhibit (HE) 2) 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 2)

Applicant responded to the SOR and requested a hearing. (HE 3) On January 19, 2011, Department Counsel indicated he was ready to proceed on Applicant's case. On February 2, 2011, DOHA assigned Applicant's case to me. On March 22, 2011, Applicant's hearing was held. At the hearing, Department Counsel offered five exhibits (GE 1-5) (Tr. 19-20), and Applicant offered ten exhibits. (Tr. 21-24; AE A-J) There were no objections, and I admitted GE 1-5 and AE A-J. (Tr. 20, 24) Additionally, I admitted the hearing notice, SOR, and Applicant's response to the SOR as hearing exhibits. (HE 1-3) On March 31, 2011, I received the transcript. I held the record open until April 29, 2011. (Tr. 97, 122-23, 131) On April 28, 2011, Applicant submitted five additional exhibits. (AE K-O) There were no objections to Applicant's post-hearing exhibits, and I admitted them into evidence. (AE K-O)

Procedural Issue

During the hearing, Applicant's history of alcohol consumption was raised by his disclosure of two DUIs on his SF 86, and his conviction for a DUI, which occurred on May 13, 2010. (Tr. 95; GE 1) Department Counsel moved to amend the SOR by adding three new allegations under the Alcohol Consumption Guideline:

2.a. About July 2000, Applicant was arrested for DUI. He pleaded guilty and was fined \$1,100. His driver's license was suspended for six months. He was required to attend a 20-hour class on drinking and driving. (Tr. 99)

2.b. About November 2001, Applicant was arrested for DUI. He pleaded guilty and received a fine. (Tr. 99)

2.c. On May 13, 2010, Applicant was arrested for DUI. He pleaded guilty and was sentenced to pay a \$700 fine. The court suspended his license for six months and placed him on probation for one year. The court ordered Applicant to receive alcohol counseling. (Tr. 99-100)

I held the record open for 30 days after his hearing to permit him to submit post-hearing documents, and he waived his objection to this SOR amendment. (Tr. 96-101) I granted the motion to amend the SOR by adding the allegations in SOR ¶¶ 2.a to 2.c.

Findings of Fact¹

Applicant's SOR response admitted the allegations in SOR ¶¶ 1.a, 1.c, 1.e-1.i, and 1.k. His admissions are accepted as factual findings.

Applicant is a forty-year-old employee of a defense contractor. (Tr. 6) He has worked as a senior training instructor for his employer for two years. (Tr. 26) He does not currently require a security clearance; however, he will require a clearance in about 18 months. (Tr. 27) He graduated from high school in 1990. (Tr. 6) He has attended college; however, he has not earned a degree. (Tr. 6) He served in the Marine Corps from 1988 to 1990. (Tr. 7) He said that while he was in the Marine Corps, he ate something at a party that was tainted with an illegal drug, and Applicant thought maybe it was marijuana or THC.² (Tr. 8) He had a separation board; nevertheless, he said he was not sure what illegal drug he was accused of using. (Tr. 118, 119-21) He received a general discharge under honorable conditions. (Tr. 7) He is not married, and he does not have any children. (Tr. 26)

Financial Considerations

In about 2006 or 2007, Applicant was unemployed for about three months on one occasion and for about six months on another occasion. (Tr. 34) He was also briefly unemployed in 2009. He indicated his delinquent debts resulted from decreased income due to unemployment. (Tr. 39) He hired one credit repair company, paid them \$400 per month for three months, and then he realized nothing was being accomplished to resolve his debts. (Tr. 56, 115) He terminated his relationship with this credit repair company after payment of \$1,200.

In April 2010, an Office of Personnel Management (OPM) investigator interviewed Applicant about his history of alcohol consumption, his credit report, and his delinquent debts. (Tr. 69, 102; GE 2)

¹Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

² The SOR did not allege that Applicant used illegal drugs and was discharged from the Marine Corps because of his illegal drug use. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

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

Id. (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). In light of the lack of notice in the SOR about the derogatory information about his illegal drug use while in the Marine Corps, I decline to consider this derogatory information for any purpose.

In March 2011, Applicant paid a credit counseling and debt resolution company, CCC, \$75, as a retainer fee, and he provided a check to CCC for \$389 to help him with his credit and to begin working with his creditors. (Tr. 56, 63, 70-71, 114; AE H) CCC plans to challenge all of the debts on his credit report. The debts that survive the challenge process will be addressed, in turn, through negotiation and settlement, one at a time. (Tr. 64, 116) Applicant promised to pay the substantiated debts. (Tr. 64) CCC will start negotiating and settling the smallest debts first. (Tr. 64-65) CCC told Applicant not to have any more contact with the SOR creditors. (Tr. 79) He is taking some credit classes to help him understand finances and credit issues. (Tr. 58) When he calculated his budget, he determined that he had about \$500 left at the end of the month after paying his expenses and making payments on his debts. (Tr. 77-78) He did not have credit counseling; however, he did have a two-hour discussion about credit with a counselor. (Tr. 80) He uses an electronic budget to track his expenses and debt payments. (Tr. 81)

Applicant's SOR lists 12 issues of financial concern including a bankruptcy and 11 debts totaling \$9,635. The status of these financial issues is as follows:

SOR ¶ 1.a 2004 Bankruptcy. Applicant and three others invested in a restaurant. (Tr. 28) Applicant was the restaurant's chef and was not focused on financial matters. (Tr. 28) One of the partners cleaned out the partnership bank accounts. (Tr. 28) Applicant estimated that between \$75,000 and about \$175,000 of his debt was discharged by a Chapter 7 Bankruptcy in January 2004. (Tr. 29-33)

SOR ¶ 1.b medical debt (\$125)—PAID. On December 9, 2010, Applicant paid the creditor \$130 resolving this debt. (Tr. 37-38; AE A)

SOR ¶ 1.c credit card debt (\$487)—UNRESOLVED. In 2008, Applicant's credit card account became delinquent. (Tr. 39-40) He did not pay the delinquency because he wanted to investigate the amount of the debt. (Tr. 41) The creditor was unable or unwilling to send a statement showing how the amount of the debt was calculated, so the debt remains unpaid. (Tr. 42-43)

SOR ¶ 1.d telecommunications debt (\$86)—PAID. On December 6, 2010, Applicant paid this creditor \$86, and this debt was resolved. (Tr. 43-44; AE B)

SOR ¶ 1.e debt (\$589)—UNRESOLVED. Applicant did not pay this debt because either the creditor was unable or unwilling to send a statement showing how the amount of the debt was calculated, or the creditor was unwilling to send verification of payment if the debt was paid. (Tr. 45-48)

SOR ¶ 1.f medical debt (\$224)—UNRESOLVED. Applicant did not pay this debt because the creditor was unable or unwilling to provide him any information to explain the amount of the debt. (Tr. 49-50)

SOR ¶ 1.g personal loan (\$5,420)—UNRESOLVED. Two or three years ago, Applicant borrowed about \$3,500 for home repairs. (Tr. 50-52) CCC is supposed to help him resolve this debt. (Tr. 50-51) This creditor has not been paid anything. (Tr. 53)

SOR ¶ 1.h telecommunications debt (\$1,306)—UNRESOLVED. This debt became delinquent two or three years ago. (Tr. 53-54) Applicant has asked CCC to contest the debt because he disagrees with the amount. (Tr. 53-54)

SOR ¶ 1.i credit card debt (\$592)—UNRESOLVED. This debt became delinquent several years ago. (Tr. 58-60) Applicant did not pay the debt because he did not get sufficient assurance that he would receive a receipt for payment from the creditor. (Tr. 59-62) This is the next debt he plans to pay. (Tr. 62)

SOR ¶ 1.j credit card debt (\$409)—PAID. On December 7, 2010, this creditor wrote that the debt was paid in full on December 6, 2010. (Tr. 65; AE C)

SOR ¶ 1.k medical debt (\$284)—UNRESOLVED. When Applicant called this creditor and offered to pay the debt, the creditor wanted his home phone number (probably to verify Applicant's identity for comparison purposes with the home number the creditor had on file). Applicant refused to provide his home phone number to the creditor. (Tr. 66) The creditor would not discuss the debt with him. (Tr. 66) He had no further contact with the creditor. (Tr. 66)

SOR ¶ 1.l debt (\$113)—PAID. On December 10, 2010, the creditor wrote Applicant that the debt was satisfied in full. (Tr. 67-68; AE D)

In sum, Applicant paid 4 of 11 debts, and the remaining 7 debts, totaling \$8,902 are being addressed by CCC. He would have made substantially more progress, except he relied on a credit counseling company that was ineffective in debt resolution. Additionally, he had to pay about \$3,200 to address his May 13, 2010 DUI. See Next Section.

Alcohol Consumption

Applicant began consuming alcohol at the age of about 15 or 16. (Tr. 103) He subsequently consumed alcohol on an intermittent basis until May 13, 2010.

About July 2000, Applicant was arrested for DUI. He pleaded guilty, was fined, and his driver's license was suspended for six months. The court required him to attend a 20-hour class on drinking alcohol and driving. (Tr. 99)

About November 2001, Applicant consumed four or five beers and two shots over a four-hour period. (GE 2 at 4) He chose to drive and was in a vehicle accident. (GE 2 at 4) He was arrested for DUI. He pleaded guilty and received a \$1,100 fine. (Tr. 99) The court required him to complete 40 hours of alcohol counseling. (Tr. 119) He did not remember whether he ever had a diagnosis or prognosis from a medical

professional that addressed his alcohol consumption. (Tr. 119) He has never gone to an Alcoholics Anonymous meeting. (Tr. 119)

On April 19, 2010, Applicant told the OPM investigator that he intended not to drink alcohol and drive. (Tr. 106) At his hearing, he said in the last three years, the only time he drove after consuming alcohol was on May 13, 2010. (Tr. 106-07)

On May 13, 2010, Applicant drank five or six beers over about a 90-minute period, and then he went for a drive. (Tr. 90) The police apprehended him for DUI. (Tr. 83, 88-89) He told the police that he wanted to consult counsel before taking the breathalyzer test (BAT) at the police station. (Tr. 92, 94) There were no BAT results. He pleaded guilty to DUI. (Tr. 94) He is in the process of completing 20 hours of required alcohol-education classes. (Tr. 83) He expects the alcohol-education classes to be completed by the end of April 2011. (Tr. 83) He paid a \$700 fine, and he paid his attorney \$2,500. (Tr. 84) His driver's license was suspended for six months. (Tr. 84) His probation was for one year, and it was completed on May 13, 2011. (Tr. 94) He noted his two prior DUIs (Tr. 86), and that he had quit drinking alcohol. (Tr. 90)

Applicant emphasized his patriotism, diligence and contributions to his soldier-students. (Tr. 123) He taught them skills which may save their lives in a combat zone. (Tr. 123) He acknowledged that his third DUI was a big mistake, and he took full responsibility for his actions. (Tr. 124-25)

Character references

Applicant's supervisor described Applicant as conscientious, diligent, honest, professional, proficient, and exceptionally effective as an instructor. (AE I) Applicant will be able to increase his contributions to mission accomplish if he receives a security clearance. (AE I) He recommended approval of Applicant's security clearance. (AE I) Five student-training evaluations were very positive in their comments about the instruction that Applicant provided. (AE J)

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.

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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 about 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 (4th 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. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. 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 concern is under Guideline F (financial considerations) and G (alcohol consumption).

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 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 his credit reports, his OPM personal subject interview (PSI), and his statement at his hearing. His SOR lists a Bankruptcy Code Chapter 7 discharge of his debts in January 2004, and 11 delinquent debts, totaling \$9,635. Some of his debts have been delinquent for more than two 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 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's conduct in resolving his debts warrants partial application of AG ¶¶ 20(b) and 20(c), and full application of AG ¶ 20(d).³ Although Applicant did not receive financial counseling, he generated several budgets, and he has sufficient knowledge and understanding of financial and credit issues. He showed some good faith when he admitted responsibility for most of his SOR debts. His financial situation was damaged by insufficient income and brief periods of unemployment. He would have made substantially more progress resolving his delinquent debts, except he relied on a credit counseling company that was ineffective in debt resolution, and he had to pay about \$3,200 to address his May 13, 2010 DUI. His 2010 DUI does not provide any mitigation under the Financial Considerations Guideline because his choice to commit the DUI was a voluntary act and showed very poor judgment. His financial circumstances have been stable for about two years.

Although Applicant showed some irresponsibility by failing to maintain better contact with all of his creditors,⁴ recently, he has relied upon credit counseling services to resolve his delinquent debts. CCC has told Applicant not to communicate with his creditors. Applicant did not provide any written evidence that he disputed any debts, and AG ¶ 20(e) does not apply.

³The 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].

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) (internal citation and footnote omitted)).

⁴Even 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.

In conclusion, Applicant paid four debts and the total of his delinquent accounts is less than \$9,000. He has retained CCC to resolve his remaining debts. He has made sufficient effort and shown enough good faith to mitigate financial considerations concerns.

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) through 22(g) do not apply. Applicant did not consume alcohol at work or have any alcohol-related incidents at work. His alcohol-consumption problem was not diagnosed or evaluated by a qualified medical professional (e.g., physician,

clinical psychologist, or psychiatrist) or by a licensed clinical social worker. Although he attended some alcohol awareness-type classes, he did not receive the benefits of a significant alcohol treatment program. He was not diagnosed as an alcohol abuser or as being alcohol dependent. Binge drinking is not defined and may require more significant alcohol consumption than Applicant's. There is no evidence that Applicant failed to comply with a court order not to consume alcohol.

From 2000 to May 13, 2010, Applicant had three alcohol-related incidents resulting in three DUI convictions. AG ¶ 22(a) applies. "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 (9th 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(a) - 22(d) 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.

None of the mitigating conditions fully apply. Applicant had DUIs in July 2000, November 2001, and on May 13, 2010. In 2000, he completed a 20-hour class on drinking and driving, and in 2001, he completed a similar 40-hour class. He is credited with completion of his third such class shortly after his hearing. He said he ended his alcohol consumption on May 13, 2010. Statements from colleagues, friends, or family

members about his alcohol consumption would have been helpful; however, they are not required. He has not described attendance at any Alcoholic Anonymous meetings. Evidence of diagnosis and prognosis from a medical professional would have aided in the decision.

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.⁵ Of course, absence of alcohol consumption is not the only factor that must be considered. His history of alcohol problems and the lack of evidence of completion of more in-depth rehabilitation programs exclude providing full mitigating credit under AG ¶ 23 at this time.

Applicant's statement about ending his alcohol consumption after his May 13, 2010 DUI is a positive development, showing that he recognizes the importance of overcoming his alcohol problems. However, after careful consideration of the Appeal Board's jurisprudence on alcohol consumption,⁶ I conclude three DUIs from 2000 to 2010, are significant factors weighing against mitigating alcohol consumption concerns.

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 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

⁵See 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).

⁶For 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).

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

Although the rationale for reinstating Applicant's clearance is insufficient to warrant a security clearance at this time, there are several factors tending to support approval of his access to classified information. Applicant is forty years old. He is sufficiently mature to understand and comply with his security responsibilities. He graduated from high school in 1990. He has attended college; however, he has not earned a degree. He served in the Marine Corps from 1988 to 1990. He worked as a senior training instruction for his employer for two years. He deserves substantial credit for volunteering to support the U.S. Government as an employee of a contractor and during his two years of active duty Marine Corps service. Periods of unemployment contributed to his financial woes. He paid 4 of 11 debts, and the remaining seven debts, totaling \$8,902 are being addressed by CCC. He would have made substantially more progress resolving his delinquent debts, except he relied on a credit counseling company that was ineffective in debt resolution. There is every indication that he is loyal to the United States and his employer. His supervisor praised his diligence, professionalism, and responsibility. I give Applicant substantial credit for admitting responsibility for most of his SOR debts and being honest to the OPM investigator about his financial plight. These factors show some responsibility, rehabilitation, and mitigation.

The whole-person factors against reinstatement of Applicant's clearance are more substantial at this time. From 2000 to May 13, 2010, Applicant had three alcohol-related incidents, resulting in DUI convictions. The facts, degree, and timing of his alcohol abuse and the extent of his rehabilitation do not establish full mitigation. With a history of three DUIs, a fairly lengthy period of abstaining from alcohol consumption or better evidence of diagnosis, prognosis, or rehabilitation is necessary to assure that future lapses in judgment are unlikely. Applicant said he ended his alcohol consumption on May 13, 2010, which is very strong mitigation. However, his limited rehabilitative efforts increase security concerns. The likelihood of recurrence of alcohol consumption is still sufficiently probable to require more rehabilitation. Lingering doubts remain concerning his current reliability, trustworthiness, or good judgment.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude financial considerations concerns are mitigated; however, alcohol consumption concerns are not mitigated. Eligibility for access to classified information is denied.

Formal Findings

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

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a-1.l:	For Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraphs 2.a-2.c:	Against Applicant

Conclusion

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

MARK HARVEY
Administrative Judge