



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 [Name Redacted]) ISCR Case No. 10-09232
)
)
 Applicant for Security Clearance)

Appearances

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

05/31/2012

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted an electronic security clearance questionnaire for investigations processing (e-QIP) on April 23, 2010. On January 6, 2012, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations; Guideline E, Personal Conduct; and Guideline G, Alcohol Consumption. The action was taken 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 adjudicative guidelines (AG), effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR and requested that his case be decided on the written record. Department Counsel prepared a File of Relevant Material (FORM) on February 29, 2012. The FORM was forwarded to Applicant on March 5, 2012. Applicant received the FORM on March 13, 2012. He had 30 days to submit a response to the FORM. Applicant timely submitted a Response to the FORM. (27 pages). It is admitted as Item 14. Department Counsel had no objection to Applicant's response to the FORM.

Department Counsel's response is marked as Item 15. On May 7, 2012, the FORM was forwarded to the hearing office and was assigned to me on May 8, 2012.

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Amendment to SOR

Department Counsel moved to amend the SOR, as follows:

Modify SOR ¶ 2.d : Change the number and letter, "3.c" to "3.e" in the last sentence:

2.d. You falsified material facts on an Electronic Questionnaire for Investigations Processing (e-QIP), executed by you under date April 23, 2010, in response to "**Section 24: Use of Alcohol** In the last 7 years, has your use of alcohol had a negative impact on your work performance, your professional or personal relationships, your finances, or resulted in intervention by law enforcement/public safety personnel?" You answered, "No" to this question, whereas in truth, you deliberately failed to disclose that you received nonjudicial punishment while on active duty in the U.S. Air Force as set forth in paragraph 3.e, below.

Add SOR ¶ 2.e:

2.e. During an interview with the Department of Defense investigator in about June 2010, you deliberately provided false or misleading information to the investigators by stating you, "experienced a relapse for the first and only time" when you used alcohol in February 2010. In fact, as you then knew and sought to conceal, you had resumed consuming alcohol only about six to seven months after completing an inpatient alcohol treatment program in about July 2006, as set forth in subparagraph 3.f, below, and continued to consume alcohol on weekends, often to intoxication, until about February 2010.

Pursuant to paragraph E3.1.17 of the Directive, I find the amendments conform with the evidence in the record. In his response to the FORM, Applicant apologizes for falsifying material facts in response to Section 24. I find he admits the amendment of SOR ¶ 2.d. He apologizes for his alcohol relapse. He does not mention whether he admits or denies providing false or misleading information regarding when he relapsed to investigators as alleged in SOR ¶ 2.e. I find Applicant denies SOR ¶ 2.e based on his ambiguous answer. (Item 14)

Upon my own motion, SOR ¶ 3.g is hereby amended in order to conform with the evidence in the record in accordance with paragraph E3.1.17 of the Directive to read as follows:

3.g. You experienced a relapse six months after receiving a diagnosis of alcohol dependence and completion of an inpatient alcohol treatment program in July 2006 by consuming between ½ to one gallon of whiskey on the weekends until February 2010.

Findings of Fact

In his answer to the SOR, Applicant admits the allegations alleged in SOR ¶¶ 1.a, 2.d, and 3.a – 3.h. He denies the allegations in SOR ¶¶ 1.b – 1.f, and 2.a – 2.c, and 2.e. (Item 4)

Applicant is a 46-year-old male employed by a Department of Defense contractor since October 2008 seeking to obtain a security clearance. He enlisted in the United States Air Force in February 1986. He retired at the grade of Technical Sergeant in February 2007. His DD Form 214 states the reason for his separation as “VOL RETIREMENT SUFFICIENT SERVICE FOR RETIREMENT.” He is a high school graduate and earned a certificate from a vocational school in September 2007. He is single and has no children. (Item 5; Item 12)

Guideline F, Financial Considerations

After Applicant completed his security clearance questionnaire, a background investigation was initiated. His background investigation revealed six delinquent accounts, an approximate total balance of \$55,830. The delinquent accounts include: a \$40,676 delinquent credit card account placed for collection in September 2009 (SOR ¶ 1.a: Item 13 at 3); an \$8,316 delinquent account placed for collection in July 2009 (SOR ¶ 1.b: Item 13 at 6); a \$6,388 delinquent credit card account that was charged off in July 2009 (SOR ¶ 1.c: Item 13 at 3); a \$200 traffic ticket placed for collection in June 2009 (SOR ¶ 1.d: Item 13 at 5); a \$150 traffic ticket placed for collection in July 2009 (SOR ¶ 1.e: Item 13 at 5), and a \$100 traffic ticket placed for collection in June 2009. (Item 13 at 5)

In response to section 26 of his e-QIP application, Applicant indicated that the debts alleged in SOR ¶¶ 1.a, 1.b, and 1.c were included in a debt repayment plan which he established with a debt repayment company on April 20, 2010. Applicant agreed to pay \$658.18 per month over a 50-month period to resolve the three debts. (Item 5, section 27; Item 10 at 7-22) During an interview with an investigator conducting his background investigation on June 14, 2010, Applicant stated the three debts alleged in SOR ¶¶ 1.a, 1.b, and 1.c are signature loans that he opened while he was on active duty. He subsequently was given non-judicial punishment and was directed to retire from active duty earlier than he expected. Upon his retirement from active duty, he was unemployed from March 2007 until May 2008. Between May 2008 and August 2008, he obtained employment working temporary positions. He was also unemployed between August 2008 and October 2008. Applicant was unable to pay his debts because of his periods of unemployment and underemployment. Now that he is employed full-time, his financial situation has improved. The debts alleged in SOR ¶¶ 1.d, 1.e, and 1.f are traffic

tickets. Applicant forgot to pay the tickets and told the investigator he intended to pay them. (Item 5, section 13; Item 7 at 5-6, 11)

In response to interrogatories on November 9, 2011, Applicant indicated that he cancelled his agreement with the debt repayment company on May 31, 2011, because he believed he could manage his bills himself and avoid the extra fees paid to the company. The creditor alleged in SOR ¶ 1.a obtained a judgment against Applicant on April 4, 2011. The creditor attempted to garnish Applicant's wages, but was only able to recoup \$5.09. (Item 10, attachment 3, at 23-38)

On January 31, 2011, Applicant agreed to pay \$240 a month towards the debt alleged in SOR ¶ 1.b. He provided proof of payments between March 2011 to October 2011. (Item 10, attachment 4, at 39-48) Applicant provided proof that the traffic tickets alleged in SOR ¶¶ 1.d – 1.f were paid in full. (Item 10, attachment 5, at 49-53) Finally, Applicant provided proof that he entered into a settlement agreement with the debt alleged in SOR ¶ 1.c for \$3,000. He agreed to pay \$250 every two weeks between February 2011 and July 2011. His last payment would be \$400. He provided proof that the payments were made. He was waiting for confirmation that that debt was resolved. (Item 10, attachment 6, at 54-67).

In his response to the FORM, Applicant provided information on the status of all of the debts alleged in the SOR. Their current status is as follows:

SOR ¶ 1.a, \$40,676 charged off account, now a judgment: Applicant intended to take care of his smaller debts before taking care of this debt. He is in contact with the law office collecting on this judgment to establish a payment plan. This debt was a personal loan to take care of his monthly bills until he could find employment. (Item 14) Status of the debt is unresolved.

SOR ¶ 1.b, \$8,316, debt: Payment plan began in March 2010. Applicant pays \$240 a month. He did not make a payment in April and May 2011 because he did not have the money. He has been consistently making payments since that time. (Item 14, Response to FORM, Tab 1.a)

SOR ¶ 1.c, \$6,388 charged off credit card account: As mentioned previously, Applicant settled this account for \$3,000. The debt is paid. (Item 14, Response to FORM, Tab 1.b)

SOR ¶¶ 1.d, 1.e, 1.f: All tickets are paid in full. (Item 14, Response to FORM, Tab 1.c)

Guideline E, Personal Conduct

Applicant's three traffic tickets alleged in SOR ¶¶ 1.d – 1.f are cross-alleged under Guideline E. In addition, the Government alleges Applicant deliberately falsified

his response to Section 24 on his e-QIP application when he answered, “no.” Section 24 asks:

Use of Alcohol In the last 7 years, has your use of alcohol had a negative impact on your work performance, your professional or personal relationships, your finances, or resulted in intervention by law enforcement/public safety personnel?

It is alleged Applicant deliberately failed to disclose that he received nonjudicial punishment in June 2006 for failure to go to his appointed place of duty in violation of Article 86, UCMJ, and overindulgence in intoxicating liquor resulting in incapacitation for proper performance of duties in violation of Article 134, UCMJ, in response to this question in Section 24. However, Applicant listed an Article 15 for violation of UCMJ Articles 86 and 134 in response to Section 15: Military History and Section 22: Police Record in the same e-QIP application. I find for Applicant with respect to SOR ¶ 2.d because he listed the Article 15 on his e-QIP application. He also listed that he volunteered for a 28-day alcohol treatment program as a result of his nonjudicial punishment in response to Section 21: Mental and Emotional Health. The Government was on notice that he received an alcohol-related Article 15 in June 2006 and that he attended alcohol counseling as a result of the incident. I find that while Applicant’s response to this question in Section 24 was incorrect, he did not have a deliberate intent to mislead the Government. In fact, Applicant told an investigator during an interview on July 9, 2010, that he misread section 24. Regardless, he provided the information in other locations on the same e-QIP application, so he put the Government on notice about his alcohol issues. (Item 5, sections 14, 22, 24; Item 7 at 9)

The Government also motioned to amend the SOR by adding subparagraph 2.e which reads:

2.e During an interview with a Department of Defense Investigator in about June 2010, you deliberately provided false or misleading information to the investigator by stating you, “experienced a relapse for the first and only time” when you used alcohol in February 2010. In fact, as you then knew and sought to conceal, you had resumed consuming alcohol only about six to seven months after completing an in-patient alcohol treatment program in about July 2006, as set forth in subparagraph 3.f, below, and continued to consume alcohol on weekends, often to intoxication, until about February 2010.

On June 14, 2010, Applicant was interviewed as part of his background investigation. If the unsworn statement is given weight, Applicant told the investigator that he experienced a relapse in February 2010 for the first and only time. He later disclosed during his substance abuse evaluation on October 31, 2011, that he started drinking about six or seven months after his completion of inpatient alcohol treatment in 2006. He would drink ½ to one gallon of whiskey on the weekends. He stopped drinking in February 2010 because he decided that he had “had enough.” (Item 11, at 3-5)

These two statements are inconsistent. Applicant was misleading when he told the investigator in June 2010 that his first and only relapse was in February 2010.

Guideline G, Alcohol Consumption

Applicant admits to being an alcoholic. He had his first alcoholic beverage at age 12. He began to drink regularly at age 21, having one or two beers on weekends. He first became intoxicated at age 22. He began to get in trouble while drinking in 1991, the same year his mother died. By age 26, his drinking accelerated to many drinks on the weekends. He did not drink during the week unless he was on leave. (Item 11 at 3)

Applicant's alcohol use resulted in several nonjudicial punishments under Article 15, UCMJ, when he served on active duty in the Air Force. In June 1991, he was apprehended for operating a motor vehicle while drunk at a base in Japan. He apparently received nonjudicial punishment in violation of Article 111, UCMJ. In his response to the SOR, he admits that his punishment consisted of a reduction of one pay grade and forfeiture of \$230 from his military pay. He lost his license and went to alcohol classes for a year. He also attended Alcoholics Anonymous (AA) on a weekly basis. (Item 11 at 3)

In October 1991, Applicant was stationed at a base in England. He was drinking at the NCO Club. He drank alcohol from 5 pm until 2 am. He admits he was intoxicated, but chose to drive home. When he got in his car, the security police followed him and pulled him over because he was swerving. He subsequently failed a field sobriety test. A breathalyzer test revealed that his blood alcohol was above the legal limit. Applicant received a second nonjudicial punishment for operating a motor vehicle while drunk in violation of Article 111, UCMJ. His punishment consisted of a reduction in pay and forfeitures of \$400 pay per month for two months. (Item 7 at 7-9)

In his response to the SOR, Applicant admits to being diagnosed as alcohol dependent after attending alcohol treatment in 1992, 1993, and 1994. There is no additional evidence in the record such as treatment records verifying this assertion. After his second nonjudicial punishment, Applicant refrained from drinking for a while, but resumed drinking alcohol in January 1993. He continued to drink on the weekends. (Item 11 at 4)

Applicant's third Article 15 nonjudicial punishment happened in the summer of 2006. In June 2006, Applicant consumed a gallon of whiskey over the weekend. He drank to the point where he passed out on Sunday. He slept all day Monday because of his alcohol intoxication. He reported to work on Tuesday thinking it was Monday. He was hung over and slightly intoxicated. His supervisor confronted him when he reported to work. He received Article 15 nonjudicial punishment for violating Article 86, UCMJ, failure to go to his appointed place of duty, and Article 134, UCMJ, overindulgence of intoxicating liquor resulting in incapacitation for proper performance of duties. His punishment consisted of a suspended reduction in one pay grade, forfeitures of \$500 month pay per month for two months, and a reprimand. (Item 7 at 3; Item 11 at 4)

In June/July 2006, Applicant attended a 28-day inpatient alcohol treatment program. He was diagnosed as alcohol dependent by his treatment provider. He was required to attend a daily mandatory group AA meeting until August 1, 2006. His prognosis was that he would succeed if he abstained from alcohol and all mood-altering substances; attended AA meetings on a regular basis; maintained close contact with his sponsor; avoided former drinking colleagues; and became involved in productive off-duty activities. (Item 7 at 1-3)

Applicant remained sober for six months after he completed the program. He started to drink approximately ½ to one gallon of whiskey on the weekends. This happened around the time he retired from the U.S. Air Force. He admits to blacking out on numerous occasions between the time he started drinking again in January 2007 and February 2010. In February 2010, he decided that he had had enough and stopped drinking. (Item 11 at 4)

Applicant currently attends AA meetings on Saturdays. He prays and meditates daily. He has worked with the same AA sponsor for several years. On October 31, 2011, Applicant was assessed by a Licensed Clinical Social Worker for substance abuse issues. He received a diagnosis of Alcohol Dependence in Sustained Full Remission. Applicant was advised of this diagnosis and warned that it is not safe for him to consume any alcohol. (Item 11)

Whole-Person Factors

In his response to the FORM, Applicant provided extensive materials pertaining to his Air Force career including training certificates, enlisted performance reports, awards and decorations, and certificates of appreciation. The documents provided indicate that Applicant had a successful career in the Air Force despite his alcohol issues and Article 15 nonjudicial punishments. He requests that his 21 years of active duty service be considered. (Item 14, tabs 2-7, 10)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered when 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 for obtaining 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 as to 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 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 F, Financial Considerations

The security concern relating to the guideline for Financial Considerations 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 over-extended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition AG ¶19(a) (an inability or unwillingness to satisfy debts) and AG ¶19(c), (a history of not meeting financial obligations) apply to Applicant's case. Applicant incurred numerous delinquent debts that he has been unable to pay over the past several years. The SOR alleged six delinquent accounts with a total approximate balance of \$55,830.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several mitigating conditions potentially apply to Applicant's case.

AG ¶ 20(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) does not apply. While Applicant resolved the debts alleged in SOR ¶¶ 1.c – 1.f and is making payments towards the debt alleged in SOR ¶¶ 1.b, his largest debt, the \$40,676 debt alleged in SOR ¶ 1.a, is unresolved. Applicant has a history of being irresponsible when it comes to his finances. His past behavior casts doubt on his reliability, trustworthiness, and good judgment. As such, it raises questions about his ability to handle and protect classified information.

AG ¶ 20(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) partially applies. After his retirement from the military, Applicant had several periods of unemployment which adversely affected his finances. However, he has been employed full-time since October 2008. I cannot conclude he acted responsibly under the circumstances because all of the debts alleged in the SOR became delinquent in 2009 and Applicant did not begin to resolve the debts until April 2010.

AG ¶ 20(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) does not apply. Applicant did not attend financial counseling. He did not provide specific information as to the current status of his financial situation such as a household budget. I am unable to determine whether he is capable of resolving his debts.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies with respect to SOR ¶¶ 1.b – 1.f, Applicant provided proof that the debts alleged in SOR ¶¶ 1.c – 1.f are resolved. He provided proof that he is making payments towards the debt alleged in SOR ¶ 1.b. However, Applicant has a long way to go to resolve his financial situation. He states that he is taking steps to resolve his largest debt which is the \$40,676 debt alleged in SOR ¶ 1.a, but had not entered into a repayment agreement at the close of the record. Considering the size of the debt and the fact that it has remained delinquent for years, I cannot conclude that Applicant demonstrated a good-faith effort to resolve his debts.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Under personal conduct, the following disqualifying conditions potentially apply to Applicant's case:

AG ¶ 16(a) (deliberate omission, concealment, of falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities);

AG ¶ 16(b) (deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative); and

AG ¶ 16(d) (credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information; (2) disruptive, violent or other inappropriate behavior in the workplace; (3) a pattern of dishonesty or rule violations; and (4) evidence of significant misuse of Government or other employer's time or resources).

AG ¶ 16(a) potentially applies to the allegation in SOR 2(d) because Applicant's failure to answer "yes" to the question in Section 24 of his April 23, 2010 e-QIP application which reads: "**Use of Alcohol.** In the last 7 years, has your use of alcohol had a negative impact on your work performance, your professional or personal relationships, your finances, or resulted in intervention by law enforcement/public safety

personnel?” The Government alleges Applicant should have disclosed the June 2006 incident which resulted in him receiving Article 15 nonjudicial punishment in response to this question. In his response to the FORM, Applicant apologized for deliberately falsifying his answer to Section 24. However, Applicant listed the June 2006 Article 15 in response to Section 22(e) – Police Record on the same e-QIP application. He also listed that he attended inpatient alcohol treatment from June 2006 to August 2006 after receiving nonjudicial punishment. Applicant provided information about his alcohol issues in response to other questions on the e-QIP application. For this reason, I conclude that the falsification is not material. He had already provided information to put the Government on notice about his 2006 alcohol incident. I find for Applicant with respect to SOR ¶ 2.d.

AG ¶ 16(b) applies with respect to SOR ¶ 3.e (the amendment to the SOR) which alleged Applicant deliberately provided false and misleading information during a June 2010 interview with a Department of Defense investigator by stating that he experienced a relapse the first and only time in February 2010. On October 31, 2011, Applicant voluntarily attended a substance abuse evaluation. He disclosed during the intake interview that he returned to drinking alcohol about six or seven months after he completed the inpatient alcohol treatment program in August 2006. He was drinking between ½ gallon to one gallon of whiskey on the weekends until he quit drinking in February 2010. The Government has presented a *prima facie* case to establish that AG ¶ 16(b) applies. Applicant provided no explanation for the discrepancy in his response to the FORM. He apologizes for relapsing and states in AA they are taught to be honest. He states that his action is inexcusable for someone requesting a security clearance. He will do whatever it takes to gain everyone’s respect and confidence.

AG ¶ 16(d) applies because Applicant’s traffic violations alleged in SOR ¶¶ 2.a, 2.b and 2.c and his deliberate falsification alleged in SOR ¶ 2.e shows “a pattern of dishonesty or rule violations, which raises questions about his reliability, trustworthiness and judgment.

The following personal conduct mitigating conditions potentially apply:

AG ¶ 17(a) (the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts);

AG ¶ 17(c) (the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment); and

AG ¶ 17(d) (the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused

untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur).

AG ¶ 17(a) potentially applies to the allegation in SOR ¶ 2.e pertaining to Applicant's deliberate falsification about the extent of his alcohol use after his inpatient alcohol treatment in 2006. The Government would not have discovered this discrepancy if Applicant had not disclosed the full extent of his alcohol use in his October 31, 2011, substance abuse evaluation. In an indirect way, Applicant made a good-faith effort to correct his falsification when he fully disclosed the extent of his alcohol use after his 2006 inpatient treatment. However, the evaluation occurred approximately 16 months after his June 14, 2010, interview with a Department of Defense investigator. His full disclosure of his alcohol use cannot be considered "prompt." For this reason, AG ¶ 17(a) does not apply.

AG ¶ 17(c) applies with respect to Applicant's traffic tickets which were alleged in SOR ¶¶ 2.a, 2.b and 2.c. While Applicant neglected to pay several traffic tickets, he provided proof that he paid all of his traffic tickets. There is no indication that he has received additional tickets. SOR ¶¶ 2.a, 2.b, and 2.c are mitigated.

AG ¶ 17(d) applies with respect to Applicant's deliberate minimization of the extent of his alcohol use alleged in SOR ¶ 2.e. While providing false or misleading information to an investigator conducting your background investigation is serious, Applicant fully disclosed his alcohol use in his October 31, 2011, substance abuse evaluation. While the disclosure was not prompt, the purpose of the substance abuse evaluation was to assess Applicant's current prognosis regarding his alcohol use. Applicant was aware that the evaluation was to be provided to the Government, yet fully disclosed his alcohol use which indicates that Applicant is finally accepting his alcohol issues and no longer denies the extent of his alcohol use.

I find Applicant mitigated the concerns raised under personal conduct.

Guideline G, Alcohol Consumption

The security concern relating to the guideline for Alcohol Consumption is set out in AG ¶ 21:

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.

The guideline notes several disqualifying conditions that could raise security concerns. The following disqualifying conditions are relevant to Applicant's case:

AG ¶ 22(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);

AG ¶ 22(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)

AG ¶ 22(c) (habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the person is diagnosed as an alcohol abuser or alcohol dependent)

AG ¶ 22(d) (diagnosis by a duly qualified medical professional (e.g.; physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence);

AG ¶ 22(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); and

AG ¶ 22(f) (relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program).

AG 22(a) applies because of Applicant's two apprehensions for DUI in 1991 and 1992. AG ¶ 22(b) applies because of the June 2006 incident when Applicant showed up for work still impaired, if not intoxicated, from his alcohol binge during the previous weekend. AG ¶ 22(c) applies because when Applicant was drinking alcohol, he binged on the weekends, drinking between ½ gallon to a gallon of alcohol each weekend. Applicant admits to having black outs on numerous occasions while he was drinking between January 2007 and February 2010.

AG ¶ 22(d) applies because Applicant admits that he was diagnosed as alcohol dependent by a duly qualified medical professional in 1992, 1993, 1994, and 2006. No treatment records are in the file to verify this, but the Government is not required to produce evidence relative to any allegations that Applicant admits. See Directive ¶ E3.1.14.

AG ¶ 22(e) applies because Applicant was diagnosed as alcohol dependent in full sustained remission by a licensed clinical social worker during his substance abuse evaluation on October 31, 2011.

AG ¶ 22(f) applies because Applicant relapsed after completing his inpatient alcohol rehabilitation program in June 2006. He remained sober for six to seven months after completing treatment, but began to drink again around the time he retired from the U.S. Air Force in February 2007. He also admits to relapsing after he completed outpatient alcohol treatment in 1993 and received a diagnosis of alcohol dependence.

The guideline also includes conditions that could mitigate security concerns arising from alcohol consumption:

AG ¶ 23(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 and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment);

AG ¶ 23(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)); and

AG ¶ 23(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).

The above mitigating conditions all partially apply to Applicant's case. Applicant has apparently been sober since February 2010. However, when weighed with his history of alcohol dependence since 1992 as well as his multiple relapses, it is too soon to conclude that Applicant will remain abstinent from alcohol, absent some additional corroborating information. Applicant's recent substance abuse evaluation on October 31, 2011, resulted in a diagnosis of alcohol dependence in sustained full remission. However, the evaluation is based on information Applicant provided. While Applicant states that he attends AA regularly on Saturday mornings and has a sponsor, he did not provide additional evidence to support his assertions such as testimony from his sponsor or fellow AA members. Considering his extensive history of alcohol dependence and multiple relapses, Applicant has a substantial burden to mitigate the concerns raised under alcohol consumption. While it appears Applicant has made progress, he did not present sufficient evidence to meet his substantial burden to mitigate the concerns raised under alcohol consumption. Guideline G is found against Applicant.

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 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. I considered Applicant's career in the U.S. Air Force. I considered his attempts to resolve his delinquent finances, and the steps he has taken to deal with his alcohol dependence. Applicant did not meet his burden to mitigate the financial considerations concern because he has a \$40,000 debt that remains unresolved and he did not demonstrate that he is actively attempting to resolve the debt. While Applicant received a diagnosis of alcohol dependence in sustained full remission from a licensed clinical social worker, he provided no evidence to corroborate his assertions that he attends AA on a weekly basis and has a sponsor. Overall, Applicant failed to mitigate the concerns raised under Financial Considerations and Alcohol Consumption.

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:	AGAINST APPLICANT
Subparagraphs 1.a, 1.b:	Against Applicant
Subparagraphs 1.c - 1.f:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a – 2.e:	For Applicant
Paragraph 3, Guideline G:	AGAINST APPLICANT
Subparagraphs 3.a – 3.g:	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.

ERIN C. HOGAN
Administrative Judge