DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 11-02311
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: Joseph R. Price, Esq.

08/30/2012

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines G (Alcohol Consumption), E (Personal Conduct), and F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on September 17, 2010. On April 11, 2012, the Defense Office of Hearings and Appeals (DOHA) notified him that it was unable to find that it was clearly consistent with the national interest to continue his access to classified information, and it recommended that his case be submitted to an administrative judge for a determination whether to continue or revoke his clearance. DOHA set forth the basis for its action in a Statement of Reasons (SOR), citing security concerns under Guidelines G, E, and F. DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

Applicant received the SOR on April 18, 2012; answered it on May 4, 2012; and requested a hearing before an administrative judge. DOHA received the request on May 9, 2012. Department Counsel was ready to proceed on June 7, 2012, and the case was assigned to me on June 14, 2012. After coordinating with Applicant's attorney, DOHA issued a notice of hearing on July 11, 2012, scheduling it for August 7, 2012. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 7 were admitted in evidence without objection. Applicant testified, presented the testimony of three witnesses, and submitted Applicant's Exhibits (AX) A and B, which were admitted without objection. DOHA received the transcript (Tr.) on August 13, 2012.

Findings of Fact

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a-1.e, 2.a-2.c, 2.f, 2.h, and 3.a. He denied the allegations in SOR ¶¶ 2.d, 2.e, and 2.g. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 38-year-old project manager employed by a federal contractor since February 2006. He completed college and received a bachelor's degree in May 1996. He has held a security clearance for about eight years. (Tr. 67.) He submitted his most recent SCA to obtain a higher-level clearance. (Tr. 68.)

Applicant married in June 2003 and divorced in October 2008. Two sons, now ages 11 and 6, were born during the marriage.

In April 1997, Applicant was convicted of being drunk in public. In December 1997, he pleaded guilty to and was convicted of driving while intoxicated.

In July 2005, Applicant was charged with assault and battery on a family member after admitting that he shook his infant son on three or four occasions, punched him on three or four occasions, placed a pillow over him for a moment on two occasions, and bit his leg on two occasions. His abuse of his infant son occurred over a period of three or four months. (Tr. 96.) He disclosed his conduct during a polygraph examination conducted by another government agency (AGA). He told the polygraph examiner that the incidents occurred because he became frustrated when his son, then three or four months old, would not stop crying during the night. The AGA reported the incident to local civilian authorities. (GX 4 at 3-4.)

The charges of domestic assault were dismissed because there was no independent corroboration of Applicant's admissions. However, he was required to complete anger management counseling. (GX 4 at 3-4.) The licensed clinical social worker who provided the court-ordered counseling testified that Applicant came from a "very chaotic" family background, and that it is not unusual for family behavior patterns to be passed from one generation to the next. The focus of his treatment was on stress reduction, teaching Applicant better coping mechanisms. He saw Applicant seven times between July 2005 and December 2005. His treatment did not involve Applicant's

alcohol use. He found that Applicant was a fast learner, very cooperative, "painfully honest," embarrassed by what had happened, and "appropriately remorseful" for his conduct. At the hearing, he described Applicant as one of the most honest people he has seen. Applicant returned to him for counseling in March 2011 and has been seeing him every week. (Tr. 40-44, 46)

Applicant's ex-wife testified that the abuse of their son occurred during the winter of 2004 and continued into 2005, but she was unaware of it until the civilian authorities contacted her in April 2005. (Tr. 25.) Applicant moved out of the family home, and they never resided together again. (Tr. 26.) For the past three or four years, Applicant has visited his sons once a week and they have stayed with him every other weekend for three nights. She testified that Applicant has a "wonderful" relationship with their sons. He is very involved in their activities, coaches their sports teams, and is very dedicated to them. (Tr. 27-28.) At present, his ex-wife has no concerns about Applicant spending time alone with their children. (Tr. 29.) To the best of her knowledge, Applicant does not consume alcohol when he is with their children. (Tr. 31.) In spite of their marital difficulties, Applicant's ex-wife considers him very honest. She described him as "very forthcoming with information in most cases, and possibly even to a fault." (Tr. 39.) Applicant testified that his boys still make him angry at times, but that he has learned to step away, "cool down," and use the coping mechanisms he has learned. (Tr. 105-06.)

In December 2005, Applicant resigned from his job after his supervisors discovered that he was viewing pornographic videos on his work computer. He told his estranged wife about his resignation and the reason for it. (Tr. 32.)

From January 2006 to September 2008, Applicant voluntarily received counseling for alcohol abuse, marital problems, and the effects of physical and sexual abuse he had suffered as a child. His medical records reflect a history of weekend binge drinking. He was discharged from the treatment program with a diagnosis of alcohol dependence and major depressive disorder in full remission. His discharge summary reflects that he met all treatment goals, gained insight into his behavior, and was taking care of his physical and emotional needs. No further mental health services were recommended. The clinician who provided his diagnosis and treatment holds credentials as a licensed marriage and family therapist and a licensed professional counselor. (GX 2 at 4-7; AX A; Tr. 76, 98.)

In August 2009, Applicant was charged with driving under the influence. He was convicted of impaired driving and sentenced to probation for one year. He was required to attend an alcohol safety awareness program (ASAP), required to pay court costs and fines, and required to complete 38 hours of community service. He successfully completed all the court-ordered requirements. (GX 4 at 3; GX 5; Tr. 75.)

In response to DOHA interrogatories in October 2011, Applicant stated that he continues to drink alcoholic beverages, mostly beer. He stated that he drinks beer weekly, about two to four beers on each occasions. He also stated that he drinks to the point of intoxication "every other month or so." (GX 3 at 3.) At the hearing, he testified

that his response to DOHA interrogatories was still "fairly accurate," but that his drinking to the point of intoxication was becoming less frequent and he could not remember when it last occurred. (Tr. 101.) He also testified that he does not believe that the diagnosis of alcohol dependence was a "true depiction." (Tr. 108.)

When Applicant submitted his SCA in September 2010, he answered "Yes" to Question 13c, asking if during the last seven years he had been fired, quit a job after being told he would be fired, left a job by mutual agreement following charges or allegations of misconduct, left a job by mutual agreement following notice of unsatisfactory performance, or left a job for other reasons under unfavorable circumstances. He explained his affirmative answer by stating that he left his job because the work and travel schedule were too hectic. He did not disclose that he resigned in lieu of termination after being caught viewing pornography at work. (GX 1 at 27.)

Applicant's facility security officer (FSO) testified that he consulted with her about the need to disclose the pornography incident on his SCA. She testified that Applicant told her about the incident, she asked him if he had resigned because of it, and he answered "No." Based on his answer, she told him he need not reflect it as the reason for resigning. (Tr. 54.)

Applicant's FSO considers him "very genuine." She described him as a person who "wears his heart on his sleeve." (Tr. 60.)

On October 26, 2010, a security investigator questioned Applicant about the domestic assault on his infant son. Applicant told the investigator that he had an incident of shaking his son and tossing him onto the bed. He did not disclose the full extent of his physical abuse of his son. (GX 4 at 3.) The investigator also asked him about his resignation from a job in December 2005, and he explained that he left his job because of the travel and type of work. He did not disclose that he resigned in lieu of termination. (GX 4 at 6.) Within a few days after this interview, Applicant told his FSO that he needed to contact the investigator and "come clean." (Tr. 62.)

In a subsequent interview by the security investigator on January 11, 2011, Applicant admitted that he resigned in lieu of termination and that he did not disclose the reason for his resignation because he was embarrassed. He also told the investigator that he consulted with his FSO and she advised him not to disclose the incident involving pornography. (GX 4 at 9.)

On his SCA, Applicant also answered "Yes" to Question 21, asking if during the last seven years he had consulted with a health care professional regarding an emotional or mental health condition. The instructions under Question 21 told Applicant to answer "No" if the counseling was not court-ordered and was for "strictly marital, family, grief not related to violence by you; or strictly related to adjustments from service in a military combat environment." He disclosed the court-ordered mental health

counseling from February 2005 to May 2005, but he did not disclose the voluntary alcohol-related counseling from January 2006 through September 2008.

Applicant answered "Yes" to Question 24a, asking if during the last seven years his use of alcohol had a negative impact on his work performance, professional or personal relationships, his finances, or resulted in intervention by law enforcement or public safety personnel. He also answered "Yes" to Question 24b, asking if during the last seven years he had been ordered, advised, or asked to seek counseling or treatment as a result of his use of alcohol. Finally, he answered "Yes" to Question 24c, asking if during the last seven years he had received counseling or treatment for use of alcohol. He disclosed his ASAP counseling in 2010 but did not disclose the alcohol-related counseling from January 2006 through September 2008.

Applicant's FSO testified that she told him that Question 21 required him to disclose court-ordered counseling or counseling as a result of harming someone, but he was not required to disclose voluntary grief or marital counseling. (Tr. 56.) Applicant testified that he did not disclose the January 2006-September 2008 counseling because he thought the question required disclosure only of mandatory counseling. (Tr. 85.) He admitted in his answer to the SOR that his January 2006-September 2008 program included alcohol counseling. However, he testified that he did not disclose the January 2006-September 2008 counseling in response to Question 24c because it was primarily for marital problems and other aspects of his life. (Tr. 86.)

When Applicant and his wife separated, he was earning about $90,000 per year. He rented a basement apartment for $950 per month, including utilities. He was paying spousal and child support payments of $3,000 per month. He had two credit card accounts and reached his credit limit on both. One had a credit limit of $2,000. His credit report reflects that the other credit card had a limit of $34,200 and that he had exceeded that limit. He was making minimum payments of $1,000 per month on the second card. About five years before filing for bankruptcy, he negotiated a reduction in his minimum payment to $690. He also depleted the $18,000 in his individual retirement account and borrowed from his 401(k) retirement plan. (Tr. 78-81, 94-95, 100-01; AX B at 7.) His spousal and child support obligations terminated in October 2009. He filed for Chapter 7 bankruptcy in March 2011 and received a discharge in July 2011. The two credit card debts, totaling $29,839, were the only debts discharged. (GX 6; GX 7.)

Applicant now earns about $110,000 per year. (Tr. 96.) He has paid off the loan on his ten-year-old car, is keeping up with his financial obligations, and has a credit score of 695. (Tr. 80-81; AX B at 16.).

Policies

"[N]o 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 applicants 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 AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines 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 that 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 made "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. Thus, a decision to deny a security clearance 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. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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). "[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

Guideline G, Alcohol Consumption

The SOR alleges that Applicant was charged with DUI in August 2009 and convicted of impaired driving (SOR ¶ 1.a), received treatment for alcohol use from January 2006 to September 2008 and was diagnosed with alcohol dependence in full remission (SOR ¶ 1.b), pleaded guilty to DUI in December 1997 (SOR ¶ 1.c), and was convicted of being drunk in public in April 1997 (SOR ¶ 1.d). It also alleges that from the age of 16 until at least October 2011, he consumed alcohol to excess and to the point of intoxication; and that, as of October 2011, he was drinking to intoxication approximately every other month (SOR ¶ 1.e).

The concern under this guideline 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." Applicant's admissions, corroborated by medical and court records, establish the following disqualifying conditions under this guideline:

> 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;
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> AG ¶ 22(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;
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> 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;[1] and.
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> AG ¶ 22(f): relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.

Security concerns under this guideline may be mitigated if "so much time has passed, or the behavior was so infrequent, or it happened under such unusual

[1] The clinician who evaluated Applicant was not a licensed clinical social worker. However, AG ¶ 22(e) is not limited to the specific credentials that are enumerated. Instead, it "contemplate[s] a broad range of providers who, by education and by position, are qualified to diagnose and treat alcohol dependence and other substance abuse disorders." ISCR Case No. 07-00558 at 5 (App. Bd. Apr. 7, 2008).

circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment." AG ¶ 23(a). The first prong of this mitigating condition ("so much time has passed") focuses on whether the conduct was recent. There are no "bright line" rules for determining when conduct is "recent." The determination must be based on a careful evaluation of the totality of the evidence. If the evidence shows "a significant period of time has passed without any evidence of misconduct," then an administrative judge must determine whether that period of time demonstrates "changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation." ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004).

Applicant's arrest for DUI was three years ago, but he admitted that he continues to drink to the point of intoxication, albeit less frequently than in the past. He admitted in response to DOHA interrogatories that he had become intoxicated around July 2011. At the hearing, he was vague about his current drinking habits, admitting that his estimate of drinking to intoxication every other month was "fairly accurate" but testifying that he could not remember when it last occurred. Applicant has not presented sufficient evidence to establish that his drinking to the point of intoxication is not recent, is infrequent, or occurred under unusual circumstances. I conclude that AG ¶ 23(a) is not established.

Security concerns also may be mitigated if "the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser)." AG ¶ 23(b). Applicant's testimony at the hearing established that he has not fully acknowledged that he is alcohol dependent, and he continues to drink to the point of intoxication. I conclude that AG ¶ 23(b) is not established.

Finally, security concerns under this guideline may be mitigated under AG ¶ 23(d) if:

> the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Applicant successfully completed his counseling program in September 2008. No aftercare was prescribed. However, this mitigating condition is not fully established because he did not receive a prognosis and he continues to drink to the point of intoxication.

Guideline E, Personal Conduct

The SOR alleges that Applicant resigned from a job in lieu of termination after he was discovered viewing pornography on his work computer (SOR ¶ 2.a). It also alleges that he was charged with assault and battery on his infant son (SOR ¶ 2.f). It further alleges that he falsified his SCA by failing to disclose his resignation in lieu of termination, failing to disclose his alcohol-related counseling from January 2006 to September 2008, and failing to disclose the full extent of his physical abuse of his infant son (SOR ¶¶ 2.b, 2.d, and 2.e). It further alleges that he falsified material facts during a security interview by failing to disclose his resignation in lieu of termination and the full extent of his physical abuse of his infant son (SOR ¶¶ 2.c and 2.g). Finally, it alleges that he received a Chapter 7 bankruptcy discharge in July 2011 (SOR ¶ 2.h).

The concern under this guideline 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.

The disqualifying condition relevant to Applicant's answers to Questions 13C, 21 and 24 on his SCA is AG ¶ 16(a): "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . ." Applicant admitted falsifying his answer to Question 13C by failing to disclose that he resigned from a job in lieu of termination, but he denied falsifying his answers to Questions 21 (consulting with a health profession for emotional or mental health condition) and 24 (alcohol-related counseling or treatment). Applicant's admission establishes AG ¶ 16(a) for his false answer to Question 13C.

When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. *See* ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

Applicant testified that he was advised by his FSO that he was not required to disclose his January 2006-September 2008 counseling in response to Question 21 unless it was court-ordered or violence-related, and his FSO corroborated his testimony. His answer to Question 21 was incorrect, because the counseling included his alcohol-related problems and was not for "strictly marital, family, grief not related to violence" and it was not "strictly related to adjustments from service in a military combat environment." However, his explanation was plausible and corroborated by his FSO. Thus, I conclude that Applicant did not intentionally falsify his answer to Question 21.

Applicant testified that he did not disclose his January 2006-September 2008 counseling in response to Question 24c because it was primarily for purposes other than alcohol abuse. However, he admitted in his answer to the SOR and his hearing testimony that he received treatment for his alcohol use. Thus, I conclude that AG ¶ 16(a) is established for his incomplete disclosure in response to Question 24c.

The disqualifying condition relevant to Applicant's false answers to a security investigator in October 2010 regarding the reasons for his termination of employment and the extent of his physical abuse of his infant son is AG ¶ 16(b): "deliberately providing false or misleading information concerning relevant facts to an employer, investigator, [or] security official, competent medical authority, or other official government representative." Applicant admitted falsifying the reasons for his December 2005 termination, and his admission is sufficient to establish AG ¶ 16(b).

Applicant denied falsifying the extent of his child abuse. In his answer to the SOR, Applicant stated that he did not specify the frequency of his conduct during the interview, but that the memory of his conduct was painful and he was ashamed of it. The extent of Applicant's disclosure to the investigator is not clear from the summary of the interview, which describes it in the singular ("the incident"), but it was sufficient to trigger a referral to civilian authorities. I conclude that Applicant's description of the incident was incomplete, but that he did not intend to mislead the investigator. It appears that Applicant was not asked for more details, and he did not volunteer more information because it was a painful and embarrassing topic. Thus, I conclude that Applicant did not intentionally provide misleading information to the investigator about the extent of his child abuse.

The following additional disqualifying conditions are established by Applicant's physical abuse of his infant son and his use of a workplace computer to view pornography. His Chapter 7 bankruptcy, although alleged under this guideline, is more appropriately discussed below under Guideline F.

> AG ¶ 16(c): credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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;
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> 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 . . . a pattern of dishonesty or rule violations; and

AG ¶ 16(e): personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing.

The following mitigating conditions are relevant to false or misleading answers on a security clearance application or during a security interview:

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

AG ¶ 17(b): the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully.

AG ¶ 17(a) is established for Applicant's false answer to Question 13C on his SCA and misleading response during the follow-up security interview on October 26, 2010, regarding the reasons for his resignation from a job. He contacted his FSO shortly after the follow-up interview, contacted the security investigator, and corrected the falsification on January 11, 2011. AG ¶ 17(a) is not established for his misleading answer to Question 24c.

AG ¶ 17(b) is established for Applicant's incorrect answer to Question 21 (counseling for emotional or mental health condition). The evidence shows that he was advised by his FSO that disclosure of counseling was not required unless it was court-ordered or as a result of harming someone. However, AG ¶ 17(b) is not established for his misleading omission of alcohol-related counseling in response to Question 24c.

Security concerns raised by personal conduct may be mitigated by any of the following:

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;

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; or
>
> AG ¶ 17(e): the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

AG ¶¶ 17(c), (d), and (e) are established for Applicant's physical abuse of his infant son. His conduct occurred seven years ago. He has acknowledged his behavior, expressed profound remorse, obtained counseling, disclosed his conduct, and has demonstrated by his current relationship with his children that his conduct is unlikely to recur.

AG ¶¶ 17(c), (d), and (e) also are established for Applicant's misuse of a workplace computer to view pornography. The incident was a one-time occurrence. Applicant was embarrassed and remorseful, and is unlikely to repeat his conduct.

No mitigating conditions are established for Applicant's incomplete and misleading responses to Question 24c on his SCA. Applicant admitted at the hearing that his January 2006-September 2008 treatment included alcohol-related counseling. His explanation that he failed to disclose it because the counseling was primarily related to other issues was implausible and unconvincing.

Guideline F, Financial Considerations

The SOR cross-alleges Applicant's Chapter 7 bankruptcy under this guideline. The concern under this guideline is set out in AG ¶ 18:

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

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money. It encompasses concerns about an appellant's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. *See* ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The relevant disqualifying conditions under this guideline are:

AG ¶ 19(a): inability or unwillingness to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(e): consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

Applicant's Chapter 7 bankruptcy and the reasons underlying it establish AG ¶ 19(a), (c) and (e). He provided minimal information about his financial history, and it is unclear how he accumulated more than $34,000 in credit card debt. He was employed in a well-paying job and his rent and utilities were low. The amount of his car payment is not reflected in the record. His biggest financial obligation was the spousal and child support, but those obligations ended in October 2009.

The relevant mitigating conditions under this guideline are:

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;

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;

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;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

AG ¶ 20(a) is not established because his bankruptcy discharge was recent. The evidence is sparse regarding the circumstances causing him to accumulate the debts that were discharged in bankruptcy, making it difficult to conclude that recurrence is unlikely.

AG ¶ 20(b) is not fully established. Although Applicant's marital breakup was arguably a condition beyond his control, it also was a product of his child abuse and involvement with pornography. Furthermore, without more information about his financial circumstances after the marital breakup, I cannot conclude that he acted responsibly under the circumstances.

AG ¶ 20(c) is established. While there is no evidence of financial counseling, Applicant's financial situation is currently under control.

AG ¶ 20(d) is not established. While Chapter 7 bankruptcy is a legally permissible solution to excessive indebtedness, it does not constitute a good-faith effort within the meaning of this mitigating condition. *See* ISCR Case No. 03-20347 (App. Bd. Oct. 26, 2006).

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

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

Applicant is a mature adult who has worked for his current employer for more than six years, held a clearance for about eight years, and is being sponsored by his current employer for a higher-level clearance. Notwithstanding their divorce, his ex-wife considers him very honest. His FSO described him as "very genuine," and a person who "wears his heart on the sleeve." His current therapist considers him one of the most honest people he has seen. Applicant appears to have learned how to deal with stress and control his anger. On the other hand, his continued consumption of alcohol to excess and his lack of candor during the security clearance process raise serious doubts about his trustworthiness and good judgment. His financial history is troublesome, and his bankruptcy discharge is recent. Insufficient time has passed for him to demonstrate a track record of financial responsibility.

After weighing the disqualifying and mitigating conditions under Guidelines G, E, and F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his alcohol consumption,

personal conduct, and financial problems. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to continue his eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline G (Alcohol Consumption):	AGAINST APPLICANT
Subparagraphs 1.a-1.e:	Against Applicant
Paragraph 2, Guideline E (Personal Conduct):	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraphs 2.b-2.d:	For Applicant
Subparagraph 2.e:	Against Applicant
Subparagraphs 2.f-2.g:	For Applicant
Subparagraph 2.h:	Against Applicant[2]
Paragraph 3, Guideline F (Financial Considerations):	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman
Administrative Judge

[2] The analysis supporting this adverse finding is contained in the discussion of SOR ¶ 3.a.