DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
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	)	
Applicant for Security Clearance	)	

Appearances

For Government: Robert J. Kilmartin, Esquire, Department Counsel
For Applicant: *Pro se*

12/12/2013

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding financial considerations and alcohol consumption. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On May 24, 2010, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).[1] On an unspecified date, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued him an interview verification request. He responded to the request on April 28, 2012.[2] On another unspecified date, the DOD CAF issued him another interview verification request. He responded to that request on April 28, 2012.[3] On another unspecified date, the DOD CAF issued him a set

[1] GE 1 ((SF 86), dated May 24, 2010).

[2] GE 2 (Personal Subject Interview, dated June 17, 2010).

[3] GE 3 (Personal Subject Interview, dated January 21, 2011).

of interrogatories. He responded to the interrogatories on April 28. 2012.[4] On another unspecified date, the DOD CAF issued him another set of interrogatories. He responded to the interrogatories on June 5, 2012.[5] On another unspecified date, the DOD CAF issued him another set of interrogatories. He responded to those interrogatories on July 6, 2012.[6] On May 2, 2013, the DOD CAF issued a Statement of Reasons (SOR) to him, under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline F (Financial Considerations) and Guideline G (Alcohol Consumption), and detailed reasons why the DOD adjudicators were unable to find 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 a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on May 8, 2013. In a sworn statement, dated May 28, 2013, Applicant responded to the SOR allegations and requested a hearing. Department Counsel indicated the Government was prepared to proceed on July 23, 2013. The case was assigned to me on August 9, 2013. A Notice of Hearing was issued on September 11, 2013, and I convened the hearing, as scheduled, on September 26, 2013.

During the hearing, 11 Government exhibits (GEs 1 through GE 11) and 4 Applicant exhibits (AEs A through AE D) were admitted into evidence without objection. Applicant testified. Several allegations in the SOR were either amended or deleted, as described further below. The transcript (Tr.) was received on October 11, 2013. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity. He submitted seven additional documents, which were marked as exhibits (AEs E through AE K) and admitted into evidence without objection. The record closed on October 11, 2013.

Findings of Fact

In his Answer to the SOR, Applicant admitted five of the factual allegations pertaining to financial considerations (¶¶ 1.a., 1.c. through 1.e., and 1.h.), and six of the factual allegations pertaining to alcohol consumption (¶¶ 2.a., 2.c. through 2.e., 2.h., and 2.i.). He denied the remaining allegations. Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the

[4] GE 6 (Applicant's Answers to Interrogatories, dated April 28, 2012).

[5] GE 4 (Applicant's Answers to Interrogatories, dated June 5, 2012).

[6] GE 5 (Applicant's Answers to Interrogatories, dated July 6, 2012).

record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 43-year-old employee of a defense contractor who, since April 2010, has served as a full-time training specialist.[7] He was previously a part-time self-employed training specialist, full-time marketing and training representative, full-time merchandiser, part-time laborer, full-time corporate sales trainer/account executive, and part-time contract training specialist.[8] He was also unemployed for various periods during 2002, 2003, 2007, and 2008.[9] Applicant served on active duty with the U.S. Navy from January 1990 until January 2000, when he was honorably discharged.[10] He was granted a confidential security clearance in 1999,[11] which was subsequently upgraded to secret.[12] An August 1989 high school general educational development **(**GED) recipient, Applicant attended several colleges periodically between 1989 and 2008, but did not obtain a degree.[13] He was married in September 1989, and divorced in September 1992.[14] Applicant has a son born in December 1990 and a daughter born in January 1995.[15]

Military Awards and Decorations

During his 10-year military career, Applicant was awarded the following awards and decorations: Navy and Marine Corps Achievement Medal (3 awards), Joint Meritorious Unit Award, Navy Unit Commendation, Navy Meritorious Unit Commendation, Navy "E" Ribbon (3 awards), Navy Good Conduct Medal (2 awards), National Defense Service Medal, Southwest Asia Service Medal (2 awards), Navy Sea Deployment Ribbon (3 awards), and Kuwait Liberation Medal.[16]

Financial Considerations

There was nothing unusual about Applicant's finances until various periods during 2002, 2003, 2007, and 2008, when he was essentially unemployed or working in part-time jobs. Applicant identified 2007 as a particularly tough time for him because he

[7] GE 1, *supra* note 1, at 20-21.

[8] GE 1, *supra* note 1, at 22-31.

[9] GE 1, *supra* note 1, at 29; Tr. at 28.

[10] GE 1, *supra* note 1, at 33-34.

[11] GE 1, *supra* note 1, at 53.

[12] Tr. at 5.

[13] GE 1, *supra* note 1, at 16-19.

[14] GE 1, *supra* note 1, at 36-37.

[15] GE 1, *supra* note 1, at 41-42.

[16] GE 7 (Certificate of Release or Discharge From Active Duty (DD Form 214), dated January 6, 2000).

was not making sufficient income as a self-employed contract trainer to make his monthly payments.[17] As a result, income taxes went unpaid, and various accounts became past due, placed for collection, charged off, went to repossession, or transferred or sold to other collection agents or debt buyers.[18]

In April 2012, Applicant submitted a personal financial statement reflecting a monthly net income of $2,474; monthly household, utility, transportation, and food expenses of $2,005; and zero monthly debt repayments, leaving a monthly remainder of $469 available for discretionary savings or expenditures.[19] Applicant also furnished earnings statements from his employer reflecting his gross and net pay for pay periods between June 2011 and March 2012.[20]

The SOR identified eight delinquent debts totaling $25,675 that had been placed for collection, charged off, or went to repossession, as generally reflected by a 2010 and two 2012 credit reports.[21] Some accounts listed in the credit reports have been transferred, reassigned, or sold to other creditors or collection agents. Other accounts are referenced repeatedly in the credit reports, in some instances duplicating other accounts listed, either under the same creditor name or under a different creditor name. Several accounts are listed with only partial account numbers. Those debts listed in the SOR, and their respective current status, according to the credit reports, evidence submitted by the Government and Applicant, and Applicant's comments regarding same, are described below.

(SOR ¶¶ 1.a. and 1.b.) There is one electric utility account in the amounts of $105 or $106 that was placed for collection *seriatim* with three different collection agents or debt purchasers in April 2010, September 2010, and December 2011. Three different account numbers were assigned to the account.[22] Applicant contacted the collection agents to confirm his suspicion and informed the DOD adjudicator that the accounts were duplicates.[23] One of the collection agents responded to his inquiry and furnished a statement reflecting an unpaid balance of $105.69.[24] Applicant paid the collection agent $105.69 on October 8, 2013.[25] I conclude the debt has been resolved.

[17] GE 2, *supra* note 2, at 2.

[18] GE 2, *supra* note 2, at 1-3; GE 3, *supra* note 3, at 6-9; GE 8 (Combined Experian, TransUnion, and Equifax Credit Report, dated June 8, 2010). Applicant also noted that for an unspecified period, his mail was either not being delivered or was not forwarded to him. *See*, Tr. at 38-41; GE 11 (Letter, dated April 27, 2012).

[19] GE 7 (Personal Financial Statement, dated April 28, 2012).

[20] GE 6, *supra* note 4, at 216 (reverse) – 226.

[21] *See*, GE 8, *supra* note 18; GE 9 (Equifax Credit Report, dated March 10, 2012); GE 10 (Equifax Credit Report, dated August 11, 2012).

[22] GE 8, *supra* note 18, at 5; GE 9, *supra* note 21, at 1; GE 10, *supra* note 21, at 1.\

[23] GE 6, *supra* note 4, at 204; Applicant's Answer to the SOR.

[24] Statement, dated April 11, 2012, attached to Applicant's Responses to the interrogatories, at 208.

[25] AE F (Online Bill Pay, dated October 9, 2013).

(SOR ¶ 1.c.) There is a medical account with an unspecified medical provider with a balance of $690 that was placed for collection in 2011.[26] Neither the March 2012 credit report nor the SOR identified the provider. Applicant was unable to acquire a statement for services from an identified creditor with the identical balance, and was informed that collection was no longer being pursued.[27] Applicant has taken reasonable efforts to identify the creditor to resolve the account, but has been unable to do so in light of the paucity of information about the account in the credit reports and the SOR. He has taken no further action regarding the account.[28] The account is no longer listed in Applicant's August 2012 or May 2013 credit reports.[29] Accordingly, although there is no evidence that Applicant has paid the creditor, I conclude the debt has been resolved.

(SOR ¶ 1.d.) There is a medical account with an unspecified medical provider with a balance of $199 that was placed for collection in 2008.[30] Neither the March 2012 or August 2012 credit reports nor the SOR identified the provider. The June 2010 credit report identified the collection agent, but not the creditor.[31] Applicant contacted the collection agent, and on October 8, 2013, he paid the collection agent $199.[32] I conclude the debt has been resolved.

(SOR ¶ 1.e.) Applicant is the noncustodial parent of his daughter born in 1995. He was ordered to pay the child's mother $397 per month, commencing in December 1996. He did so until January 2003, but stopped from February until October 2003. He resumed his payments in November 2003, generally adding an extra $25, and subsequently made even larger monthly payments. He made periodic payments, but missed several, during 2007 – 2011.[33] Through February 17, 2011, there was a child support arrearage of $13,269.16.[34] Applicant indicated his wages were garnished from 1997 until July 2010 when the mother and child moved to another state, and the state garnishing his wages was unable to continue doing so because it had lost jurisdiction over the case. Applicant was unable to make the continuing payments until the new state had acquired jurisdiction.[35] Because his daughter is now 18 years old, Applicant no longer has any child support obligations. He was not delinquent on current child

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[26] GE 9, *supra* note 21, at 1.

[27] GE 6, *supra* note 4, at 204.

[28] Tr. at 32.

[29] *See*, GE 10, *supra* note 21; *See*, AE B (TransUnion Credit Report, dated May 23, 2013).

[30] GE 9, *supra* note 21, at 1; GE 10, *supra* note 21, at 1.

[31] GE 8, *supra* note 18, at 7.

[32] AE G (Secure Payment Form, dated October 8, 2013).

[33] GE 6 (Affidavit of Child Support Delinquencies, dated February 17, 2011).

[34] GE 6 (Affidavit), *supra* note 33.

[35] GE 3, *supra* note 3, at 8.

support, but did have a past due balance of $50 as of May 23, 2013.[36] The total arrearage was reduced to $8,626.63, and effective June 8, 2013, Applicant was obligated to pay the state $50 per month until that balance is paid off.[37] I conclude the debt is in the process of being resolved.

(SOR ¶ 1.f.) There is an account with a telecommunications company with an unpaid balance of $272 that was placed for collection in 2010, and sold to a debt purchaser, claiming to be a factoring company.[38] Applicant contacted the debt purchaser and agreed to a settlement. He paid the debt purchaser $50 on April 10, 2012, over a year before the SOR was issued, and the account is considered paid in full.[39] I conclude the debt has been resolved.

(SOR ¶ 1.g.) There is a deferred student loan with a high credit of $3,500 that was 180 days past due when it was assigned to the Government in February 2010, leaving a zero balance.[40] The account was transferred to another creditor who increased the high credit to $3,789, leaving a past due balance of $4,393.[41] In June 2011, Applicant paid the creditor $479, and in September 2011, Applicant entered a rehabilitation agreement, under which he continued to make monthly payments of $69.[42] The rehabilitated loan account was sold to a bank in March 2012.[43] As of April 2012, the balance had been reduced to $3,357, and the account was considered by the creditor to be current, with a note that Applicant was paying as agreed.[44] I conclude the debt has been resolved.

(SOR ¶ 1.h.) There is a loan to finance an automobile in mid-2009 for approximately $10,000. After making monthly payments of $320 for about four or five months, and then falling behind in his payments, Applicant advised the dealership where he had purchased the vehicle that he was experiencing financial hardship. Applicant contends the dealership conferred with the finance company that had threatened repossession and resolved the situation. Applicant subsequently was able to

[36] AE A (Written Agreement For Past Due Support, dated May 23, 2013).

[37] AE A, *supra* note 36; Tr. at 30, 34.

[38] GE 8, *supra* note 18, at 5. It should be noted that a "factoring company" is a company that buys "accounts receivable" from a current creditor and then collects on those receivables from the debtor. A factored account is not supposed to be an account that is charged off.

[39] GE 6 (Account Activity, dated April 27, 2012); GE 10, *supra* note 21, at 2; AE B, *supra* note 29, at 4.

[40] GE 8, *supra* note 18, at 9

[41] GE 8, *supra* note 18, at 9.

[42] GE 6 (Repayment Obligation/Schedule Disclosure Statement, dated March 21, 2012); GE 6 (Cancelled Checks, various dates). Applicant was required to make 103 payments of $50 each, but usually paid $69 per payment; Tr. at 36-37.

[43] GE 6 (Notice, dated March 29, 2012).

[44] AE B, *supra* note 29, at 5.

catch up with his delinquent payments, and as of June 2010, was making two payments of $160 per month.[45] Applicant retained possession of the vehicle until sometime after he was convicted of driving under the influence of alcohol (DUI) in February 2011.[46]

The June 2010, March 2012, and August 2012 credit reports reveal a different story. The high credit on the account was reflected as $9,751, with $562 past due with an outstanding balance of $7,819. The vehicle was purportedly involuntarily repossessed in January 2010.[47] Applicant denied the vehicle was repossessed. He believes the threat of repossession was erroneously reported to the credit reporting agencies, and that the information was never corrected after the agreement was reached with the finance company.[48] He contends that after the registration expired on the vehicle that was parked at his condominium, the new condominium association had the vehicle impounded and eventually sold.[49] Applicant attempted to contact the dealership but learned it had gone out of business.[50] He contacted the finance company and was told it had not repossessed the vehicle.[51] Applicant requested a bill from the finance company, but it refused to send him one because the account had been previously sold back to the dealership.[52]

In June 2010, the state issued a final order in which it was determined that the finance company in question, which has a Better Business Bureau accreditation of F on a scale of A+ to F,[53] had been operating without a current, active license.[54] The account is no longer listed in Applicant's May 2013 credit report. Applicant has taken reasonable efforts to locate and pay the creditor to resolve the account, but one creditor is out of business and the finance company disavowed ownership of the account. Additionally, aside from the entry in the credit reports, an entry which Applicant has repeatedly disputed and denied, there is no evidence that the vehicle was actually repossessed. Accordingly, although there is no evidence that Applicant has paid the creditor, I conclude the debt has been resolved.

Applicant has resolved or is in the process of resolving any other delinquent debts, including those that were not alleged in the SOR, such as his income tax and

[45] GE 2, *supra* note 2, at 2; Tr. at 37.

[46] Tr. at 37-38.

[47] GE 8, *supra* note 18, at 8; GE 9, *supra* note 21, at 2; GE 10, *supra* note 21, at 2.

[48] Tr. at 37.

[49] Tr. at 38-44.

[50] GE 6, *supra* note 4, at 205.

[51] Tr. at 37.

[52] GE 6, *supra* note 4, at 205.

[53] AE K (Better Business Bureau Review, undated).

[54] AE J (Final Order, dated June 25, 2010).

credit card accounts. His plan is to continue making payments until all of his accounts are current.[55] Applicant contacted a debt consolidation service at some unspecified time, but was advised that he did not qualify for such services, and thus, has not received any financial counseling or debt consolidation services.[56]

Alcohol Consumption[57]

Applicant first started tasting alcohol at the age of four or five when he would take sips from his father's beer. When he was in the eighth grade he began consuming beer on his own for social interaction. Applicant's relationship with, or consumption of, beer has resulted in three alcohol-related incidents.

(SOR ¶ 2.b.) The first such incident occurred in May 1987, when, at the age of 17, Applicant was stopped for not wearing a seat belt. When the officer observed beer in the vehicle, he took Applicant to the police station and called Applicant's mother, who came to pick him up. Applicant was charged with DUI, but when the officer failed to appear in court, and the charge was dismissed.[58] No further actions regarding the incident were taken against Applicant.

(SOR ¶ 2.c.) In October 1998, after spending the day on base playing volleyball and consuming six or seven beers, Applicant was stopped for driving approximately 62 miles per hour (mph) in a 50 mph zone. He admitted to the officer that he had been drinking earlier. The officer administered a field sobriety test, which Applicant failed. At the police station, Applicant was administered a Breathalyzer which registered 0.14 or 0.15. He was arrested, charged with driving while intoxicated (DWI),[59] and after spending four or five hours in jail, he was released to his supervisor.[60] Applicant was sentenced to 20 hours of community service and ordered to attend five meetings of Alcoholics Anonymous (AA).[61] He completed both, and he did not receive any military discipline for the incident.[62]

[55] AE E (Statement, dated October 10, 2013).

[56] GE 3, *supra* note 3, at 9.

[57] During the hearing, Department Counsel moved to amend SOR ¶¶ 2.c., 2.d., and 2.f. There was no objection to the motions. As a result, the allegations in SOR ¶¶ 2.c. and 2.f. were altered to conform to the evidence, and SOR ¶ 2.d. was deleted in its entirety. *See*, Tr. at 55-57, 62-63.

[58] GE 3, *supra* note 3, at 5; Tr. at 52.

[59] The SOR initially alleged Applicant had been arrested in state X in November 1988 and charged with driving under the intoxicating influence of alcohol, narcotics, or pathogenic drugs (DUI). The SOR was amended to reflect the arrest took place in November 1998 in state Z. *See*, Tr. at 56. There is no police or court record in evidence to support the allegation as initially alleged or subsequently amended. It should be noted that the alcohol-related driving offense in state Z is actually operating a vehicle while intoxicated (DWI), and there is no violation under the state's law referred to as "driving under the intoxicating influence of alcohol, narcotics, or pathogenic drugs." That violation does, however, exist under the laws of state X.

[60] GE 3, *supra* note 3, at 4.

[61] GE 3, *supra* note 3, at 4.

[62] GE 3, *supra* note 3, at 4.

(SOR ¶ 2.e.) In September 2010, after drinking an unspecified quantity of beer and socializing with friends while watching a football game at a bar, Applicant left the bar and drove to a convenience store. It was shortly past midnight when he was observed by a police officer driving, without his headlights on, into the parking space. The officer approached him, and smelling the odor of alcohol coming from Applicant, asked if Applicant had consumed alcohol. Applicant responded that he had consumed two drinks, but knew that he had consumed more than that. The officer administered a field sobriety test, which Applicant failed. A search of Applicant's vehicle uncovered four open beer containers. Applicant was taken into custody and driven to the police station where he refused to take a Breathalyzer test. He was arrested, charged with DUI, and after spending the rest of the morning in jail, he was released.[63]

In February 2011, the charge was reduced to reckless driving with alcohol, and Applicant entered a plea of no contest. He was adjudicated guilty of the reduced charge, and sentenced to supervised probation for six months; fines and costs of $1,013; 50 hours of community service over the probation period or 102 hours of community service in lieu of fine and costs; ordered to attend DUI First Offender Program and the Victim Impact Panel; complete alcohol treatment and counseling as required by law; and his driving privilege was revoked for six months.[64] He successfully completed all of the conditions of probation.[65]

In January 2011, Applicant acknowledged he generally consumed four to five beers in one sitting, at a bar, and reached the point of intoxication once per week. He defined intoxication as "stumbling and slurring." Applicant denied that he has ever attempted to reduce his alcohol consumption despite having some previous alcohol-related incidents. He denied ever being professionally diagnosed as abusing alcohol or as being alcohol dependent.[66] However, after his arrest but before his February 2011 sentencing, things started to deteriorate. Since he could not drive, he essentially was stuck at home, bored, watching television, and consuming "a lot of beer." He started consuming over a 12-pack of beer a day. One day, his management team smelled the odor of stale alcohol on him at work, and frightened he would lose his job, Applicant sought help from the employee assistance program (EAP).[67]

(SOR ¶ 2.f.) In April 2011, Applicant was clinically assessed by the EAP. Based on his signs and symptoms, his daily consumption of an 18-pack of beer per day, his depression, and his alleged problem of being an alcoholic, the EAP recommended him for out-patient counseling.[68] Despite Applicant's belief that his assigned counselor was a

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[63] GE 3, *supra* note 3, at 3-4; GE 7 (Incident Report, dated September 28, 2010), at 274-279.

[64] GE 7 (Judgment and Sentence, dated February 15, 2011); Tr. at 57-58.

[65] Tr. at 58.

[66] GE 3, *supra* note 3, at 5.

[67] GE 4, *supra* note 5, at 379; Tr. at 47-48.

[68] GE 4 (EAP Clinical Assessment Form, dated April 15, 2011).

doctor,[69] she is not. She has a master's of science degree (MS), and is a licensed mental health counselor (LMHC), a certified prevention professional (CPP), and board certified professional counselor (BCPC).[70] Applicant received individual counseling, and underwent routine 90-minute mental health examinations, psychosocial assessments, and risk assessments, and received current diagnoses, commencing in April 2011, which continued until November 2011.[71] The counselor recommended that Applicant attend AA meetings in lieu of her counseling sessions.[72]

The counselor's therapy notes reveal an appropriate diagnosis in the format established by the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition – Text Revision* (*DSM-IV-TR*). A multiaxial system was developed which involves an assessment on several axes, each of which refers to a different domain of information that may help the clinician plan treatment and predict outcome. There are five such axes in the DSM-IV multiaxial classification: Axis I: clinical disorders and other conditions that may be a focus of clinical attention; Axis II: personality disorders & mental retardation; Axis III: general medical conditions; Axis IV: psychosocial and environmental problems; and Axis V: global assessment of functioning (GAF).[73] A nonaxial format is also available for those choosing not to use the multiaxial format, but all the relevant disorders and conditions should be recorded.

Applicant's Axis I diagnosis was depression from April 19, 2011 until June 20, 2011; and depression/rule out attention deficit hyperactivity disorder (ADHD) from July 5, 2011 until November 15, 2011.[74] His Axis II diagnosis was always V71.09 (no diagnosis).[75] His Axis III diagnosis was always deferred.[76] His Axis IV diagnosis was always job or family/job.[77] His Axis V GAF fluctuated between 60 and 67.[78] It is significant that although Applicant believed the counselor had diagnosed him as alcohol dependent,[79] there was never any diagnosis by this counselor of alcohol abuse or alcohol dependence.

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[69] Tr. at 47.

[70] GE 4 (EAP Clinical Assessment Form), *supra* note 67, at 389; Tr. at 50.

[71] GE 4 (Therapy Notes, various dates between April 19, 2011 and November 5, 2011). Applicant explained that the EAP paid for ten sessions with the counselor, and he paid for the remaining sessions. *See*, Tr. at 49.

[72] Tr. at 49.

[73] *DSM-IV-TR*, at 27.

[74] GE 4 (Therapy Notes), *supra* note 71).

[75] GE 4 (Therapy Notes), *supra* note 71; *DSM-IV-TR*, at 866.

[76] GE 4 (Therapy Notes), *supra* note 71.

[77] GE 4 (Therapy Notes), *supra* note 71.

[78] GE 4 (Therapy Notes), *supra* note 71.

[79] Tr. at 46, 49-50.

(SOR ¶ 2.g.) As noted above, as part of his February 2011 sentence, Applicant was ordered to complete alcohol treatment and counseling as required by law. The DUI school referred him to a counseling center and, on August 31, 2011, Applicant was admitted into the center's out-patient program. He was clinically assessed and diagnosed, and a treatment plan was established by a psychologist with a Ph.D.[80]

Applicant's Axis I diagnosis was adult antisocial behavior, rule out alcohol abuse.[81] His Axis II diagnosis was V71.09 (no diagnosis).[82] His Axis III diagnosis was none.[83] His Axis IV diagnosis was DUI reduced to reckless.[84] His Axis V GAF was 78, and it had fluctuated between 69 and 84.[85] Applicant received group counseling for one hour per session, with up to 13 "clients," from a counselor who has an MS degree, and is an LMHC.[86] Between September 2011 and December 2011, Applicant completed 9 of the program's 20 sessions[87] before transferring out of the program and into a different one because of the difficulties and cost of using public transportation.[88] It is significant that there was never any diagnosis by this counselor or psychologist of alcohol abuse or alcohol dependence.

(SOR ¶¶ 2.h. and 2.i.) Following his disenrollment from that out-patient program, and after he completed a church-sponsored team activity in a state tournament, Applicant enrolled in a different out-patient program. During the interim, however, Applicant injured a finger and, experiencing soreness, swelling, and extreme pain, he slipped from his abstinence and consumed about a pint of rum and coke in order to sleep.[89] He reported the slip to his new counselor.[90] An individualized treatment plan was established in April 2012, and he was clinically assessed in May 2012. Despite Applicant's belief that his new counselor was a doctor,[91] she is not. She has an MS degree, and is an LMHC, and a certified addiction professional (CAP).[92] The counselor's

[80] GE 5 (Interactive Core Assessment, dated August 31, 2011).

[81] GE 5, *supra* note 80.

[82] GE 5, *supra* note 80.

[83] GE 5, *supra* note 80.

[84] GE 5, *supra* note 80.

[85] GE 5, *supra* note 80.

[86] GE 5 (Outpatient Progress Notes, various dates).

[87] GE 5 (Letter, dated June 18, 2012); GE 5 (Outpatient Progress Notes), *supra* note 86.

[88] Tr. at 64. Applicant noted that it cost him $40 for a taxi to get to the group session, and the session never started on time and always ended early. GE 5 (Letter, dated July 6, 2012), at 320.

[89] GE 4, *supra* note 5, at 378.

[90] GE 4, *supra* note 5, at 378; Tr. at 71.

[91] Tr. at 50, 61.

[92] AE D (Letter, dated May 23, 2013).

initial diagnostic impression was alcohol dependent.[93] No final Axis I diagnosis was made. Applicant continued attending AA meetings three times per week,[94] and completed all of the counseling required by the program. Upon completion of the program, he chose to continue with her aftercare group sessions as a support system, and continues his aftercare participation.[95] While he no longer attends AA meetings, he does meet with his AA sponsor/coach every Saturday morning.[96]

Before contacting the EAP, Applicant's sobriety date – the date on which he started to abstain from consuming alcohol – was April 14, 2011.[97] Once he started his counseling, Applicant received a prescription for Antabuse, a drug that creates an unpleasant reaction when drinking alcohol and reduces the desire to drink. Unfortunately, once the prescription was exhausted, Applicant believed he could handle alcohol on weekends, and he had his first in a series of unreported "relapses" that he hid from his counselor. His new sobriety date became August 29, 2011.[98] Applicant remained sober until he slipped in mid-April 2012.[99] His current sobriety date is April 16, 2012.[100] Applicant acknowledges he has a drinking problem, and he has vowed not to consume alcohol in the future.[101] He conceded he did not "get it right the first time."[102] Applicant was unable to view his counseling records, so he was not aware of any

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[93] GE 5 (Psychosocial Evaluation and Intake Assessment, dated May 29, 2012). A "diagnostic impression" is the opinion of the therapist or clinician upon initial presentation of the patient's symptoms. After the initial diagnostic impression, follow up tests and procedures may be taken to get more data to support or reject the diagnostic impression in an attempt to narrow it down to a more specific level, or final "diagnosis" of the illness or condition.

[94] GE 5 (Psychosocial Evaluation and Intake Assessment), *supra* note 91, at 345.

[95] AE D, *supra* note 90; Tr. at 59, 62, 64, 72. Applicant indicated he intended to meet with his counselor after the hearing. Tr. at 72.

[96] Tr. at 72.

[97] GE 4, *supra* note 5, at 378.

[98] GE 4, *supra* note 5, at 379.

[99] During a group counseling session, Applicant and his current counselor recently discussed the differences between a slip and a relapse. The explanation was as follows:

> . . . to be considered to be a slip, one would return immediately to the support group and be honest about what happened and continue on with the recovery process, trying to understand why it happened and how to prevent a repeat. A relapse would be when a person drinks and not only does not report it to the support group, but lies about it (most importantly to themselves) and CONTINUES to drink, requiring a "lower" rock bottom than the one previously brought them to recovery in the first place.

AE E (Letter, dated October 10, 2013)

[100] Tr. at 19, 71.

[101] Tr. at 67.

[102] Tr. at 71.

counselor comments. Nevertheless, irrespective of any medical diagnosis, he considers himself to be an alcoholic, but not alcohol dependent.[103]

Character References and Work Performance

In February 2013, Applicant's manager noted that Applicant is a team player who is always ready and willing to assist, is dependable, competent, and that he consistently meets expectations. The performance period from January 2012 until February 2013 "was decisively [Applicant's] best performing year thus far." He also noted that it was a "great improvement from previous years."[104] A project manager, who is also a member of the church school board of directors, noted that Applicant had volunteered over 400 hours in the last three and one-half years supporting the promotion of science and engineering to the students and serving as the volunteer coach for the robotics club. He supports Applicant without hesitation.[105]

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."[106] 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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."[107]

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

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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. The entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider

[103] Tr. at 51, 72-74.

[104] AE C (Manager Evaluation, dated April 2, 2013).

[105] AE I (Letter of Reference, dated October 10, 2013).

[106] *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

[107] Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."[108] The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.[109]

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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. Furthermore, "security clearance determinations should err, if they must, on the side of denials."[110]

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."[111] 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 as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

[108] "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "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).

[109] *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

[110] *Egan*, 484 U.S. at 531

[111] *See* Exec. Or. 10865 § 7.

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 overextended is at risk of having to engage in illegal acts to generate funds. . . .

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an *inability or unwillingness to satisfy debts* is potentially disqualifying. Similarly, under AG ¶ 19(c), *a history of not meeting financial obligations* may raise security concerns. Applicant had eight delinquent debts totaling $25,675 that had been placed for collection, charged off, or purportedly went to repossession. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where *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*. Also, under AG ¶ 20(b), financial security concerns may be mitigated where *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*. Evidence that *the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control* is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*.[112]

[112] The 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 [or statute of limitations]) in order to claim the benefit of [the "good-faith" mitigating condition].

(internal citation and footnote omitted) 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)).

AG ¶¶ 20(b), 20(c) and 20(d) apply, and AG ¶ 20(a) partially applies. The nature, frequency, and relative recency of Applicant's financial difficulties on and off since 2002 make it difficult to conclude that those difficulties occurred "so long ago" or were "so infrequent." Applicant's financial problems were not caused by frivolous or irresponsible spending, and he did not spend beyond his means. Applicant's financial problems were, to some degree, beyond his control. His former girlfriend gave birth to Applicant's daughter. During parts of 2002, 2003, 2007, and 2008, he was essentially unemployed or working in part-time jobs. He identified 2007 as a particularly tough time because he was not making sufficient income as a self-employed contract trainer to make his monthly payments. Once his income increased, he turned his focus to his creditors in an effort to identify them and resolve his delinquent accounts.

Applicant acted responsibly by contacting the creditors and collection agents he could identify, by paying off several SOR and non-SOR accounts, and by entering repayment agreements with other creditors. There is one account that has caused him significant consternation, especially since it pertains to a vehicle which, according to the credit reports, was involuntarily repossessed, but which he continued to possess for some time after the purported repossession. The dealer is out of business and the finance company disavowed ownership of the account. The account is no longer on Applicant's 2013 credit report. Applicant intends to continue making payments until all of the accounts are current. While he has not received any financial counseling or debt consolidation services, there are clear indications that his financial problems are being resolved and are under control. Applicant has no other delinquent debts. Applicant's actions under the circumstances confronting him do not cast doubt on his current reliability, trustworthiness, or good judgment.[113]

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 conditions that could raise security concerns. Under 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* is potentially disqualifying. Also, AG ¶ 22(c) may apply where there is *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.* Similarly, if there is a *diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence*, AG ¶

[113] *See* ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

22(d) may apply. In addition, under AG ¶ 22(e), it is potentially disqualifying when there is an *evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.* Also, where there is a *relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program*, AG ¶ 22(f) may apply.

AG ¶¶ 22(a) and 22(c) have been established. Appellant's consumption of alcohol, sometimes up to an 18-pack of beer a day, resulted in his periodic impairment or intoxication. He was arrested in October 1998 and charged with DWI, and arrested in September 2010 and charged with DUI. In 1998, he was ordered to perform community service and to attend AA. The 2010 charge was reduced to reckless driving, and he was sentenced to perform community service, probation, attend the DUI First Offender Program, and to complete alcohol treatment and counseling as required by law. While Applicant was also involved in an alcohol-related incident when he was 17 years old, that incident occurred when he was a minor, and the charge was dismissed.

AG ¶¶ 22(d) and 22(e) have not been established. Appellant received a diagnosis of depression and depression/rule out ADHD from a counselor with an MS, LMHC, CPC, and BCPC, in 2011. A later 2011 diagnosis from a different counselor with an MS and LMHC, was adult antisocial behavior/rule out alcohol abuse. A subsequent 2012 initial diagnostic impression, not a final diagnosis, was given by a counselor with an MS, LMHC, and CAP. Although there was a psychologist on the staff of the program when the initial diagnosis was given, there is no evidence that he ever participated in any aspect of the program, especially the diagnosis segment, other than establishing the overall program. Therefore, as it pertains to the two 2011 diagnoses, there is no evidence of a diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence. The same is true regarding the diagnostic impression. As to the same diagnostic impression, there is no evidence to support an "evaluation" of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program. There is no evidence to support any potential contention that an MS, LMHC, and CAP constitutes or equates to a licensed clinical social worker. Furthermore, while there was an initial diagnostic impression of alcohol dependence, there is no evidence to support the existence of a final diagnosis.

AG ¶ 22(f) has not been established. Applicant was in an alcohol program from April 2011 until November 2011, but there was no diagnosis of alcohol abuse or dependence from that program. He was in another alcohol program from August 2011 and December 2011, but, once again, there was no diagnosis of alcohol abuse or dependence from that program. It is correct that Applicant continued to consume alcohol during segments of the programs, but without a diagnosis of alcohol abuse or dependence, there cannot be a relapse following a diagnosis. Applicant's initial sobriety date was April 14, 2011. He subsequently slipped and his new sobriety date became August 29, 2011. Applicant's current sobriety date is April 16, 2012, before the date of the diagnostic impression. Thus, there is no evidence of a relapse after a diagnostic impression of alcohol dependence, much less a diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.

The guidelines also include examples of conditions that could mitigate security concerns arising from alcohol consumption. Under AG ¶ 23(b), the disqualifying condition may be mitigated when *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)*. Similarly, AG ¶ 23(d) applies where the evidence shows:

> 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.

AG ¶¶ 23(b) and 23(d) apply. Appellant has taken full responsibility for his actions. He acknowledged that he did not get it right the first time when he continued to consume alcohol. He has also acknowledged that he has a drinking problem, and considers himself to be an alcoholic. However, considering one's self to be an alcoholic is not the same as being professionally diagnosed as an alcohol abuser or alcohol dependent. Applicant has vowed not to consume alcohol in the future. He has successfully completed outpatient counseling and has voluntarily entered the aftercare program. Applicant has demonstrated a clear and established pattern of abstinence, and he routinely meets with his AA sponsor/coach. There is no evidence of a recommendation for continued counseling, therapy, or follow-up.

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. Moreover, I have evaluated the various

aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.[114]

There is some evidence against mitigating Applicant's conduct. Applicant permitted accounts to become delinquent. As a result, accounts were placed for collection or charged off. He consumed alcohol routinely since the eighth grade, and over the years, has been involved in three alcohol-related incidents involving police and judicial authorities. One day, his management team smelled the odor of stale alcohol on him at work.

The mitigating evidence under the whole-person concept is more substantial. Applicant's financial problems were not caused by frivolous or irresponsible spending on his part, and he did not spend beyond his means. Applicant's financial problems were, to some degree, beyond his control. His former girlfriend gave birth to Applicant's daughter. During several years, he was essentially unemployed or working in part-time jobs, with 2007 being identified as a particularly tough time because he was not making sufficient income as a self-employed contract trainer to make his monthly payments. Applicant acted responsibly by contacting the creditors and collection agents he could identify, by paying off several SOR and non-SOR accounts, and by entering repayment agreements with other creditors. Applicant intends to continue making payments until all of the accounts are current. There are clear indications that his financial problems are being resolved and are under control. Applicant's actions under the circumstances confronting him do not cast doubt on his current reliability, trustworthiness, or good judgment.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:[115]

> In evaluating Guideline F cases, the Board has previously noted that the concept of "'meaningful track record' necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has ". . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his [or her] actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. *See* Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may

[114] *See U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); *See also* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

[115] ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Applicant has demonstrated a "meaningful track record" of debt reduction and elimination. Applicant has made some significant efforts to resolve his accounts.

But Applicant's situation does not consist solely of financial problems, for he also has alcohol consumption issues. He routinely consumed alcohol to excess, and attended several alcohol programs, and, after some slips, which he referred to as relapses, he finally acknowledged that he did not get it right the first time when he continued to consume alcohol. Applicant admits that he has a drinking problem, and considers himself to be an alcoholic. He has vowed not to consume alcohol in the future. Applicant successfully completed outpatient counseling and has voluntarily entered the aftercare program. With a current sobriety date of April 16, 2012 – about 20 months ago – he has demonstrated a clear and established pattern of abstinence. In addition, he meets with his AA sponsor/coach on a weekly basis.

Overall, the evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has mitigated the security concerns arising from his financial considerations and alcohol consumption. *See* AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	Withdrawn
Subparagraph 2.e:	For Applicant
Subparagraph 2.f:	For Applicant

Subparagraph 2.g:	For Applicant
Subparagraph 2.h:	For Applicant
Subparagraph 2.i:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ROBERT ROBINSON GALES
Administrative Judge