



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



In the matter of:)
)
XXXXXXXXXX, XXXXX) ISCR Case No. 11-11308
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys, Esq., Department Counsel
For Applicant: Applicant's Spouse

04/29/2013

Decision

Tuider, Robert J., Administrative Judge:

Applicant's statement of reasons (SOR) as amended alleges discharge of Applicant's debts under Chapter 7 of the Bankruptcy Code in April 2005 and two subsequent delinquent debts totaling \$23,542 as well as alcohol-related driving offenses in February 1991 and October 2010. Since October 2010, he has responsibly consumed alcohol, and he does not drive after drinking alcohol. He paid one debt and is attempting in good-faith to repay the other debt. Financial considerations and alcohol consumption security concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On May 11, 2011, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance application (SF 86) (GE 1). On November 9, 2012, the Department of Defense (DOD) issued an SOR to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guideline F (financial considerations). The SOR detailed reasons why DOD was unable to find that it is clearly consistent with the national interest to continue a security clearance for Applicant, and it recommended that his case be submitted to an administrative judge for a determination whether his clearance should be continued or revoked.

On December 4, 2012, Applicant responded to the SOR, and he requested a hearing. On January 28, 2013, Department Counsel generated an amendment to the SOR, alleging additional security concerns under Guideline F and three allegations under Guideline G (alcohol consumption). On January 28, 2013, Applicant responded to the amended SOR. (Tr. 11) On January 31, 2013, Department Counsel indicated she was ready to proceed on Applicant's case. On February 8, 2013, Defense Office of Hearings and Appeals (DOHA) assigned Applicant's case to me. On February 15, 2013, DOHA issued a hearing notice, setting the hearing for March 5, 2013. Applicant's hearing was held as scheduled. At the hearing, Department Counsel offered seven exhibits, and Applicant offered ten exhibits. (Tr. 14, 72; GE 1-7; AE A-J) There were no objections, and I admitted GE 1-7 and AE A-J. (Tr. 14, 72) The record was held open after the hearing until March 15, 2013, for additional evidence. (Tr. 72-73, 80) On March 12, 2013, DOHA received the transcript of the hearing. After the hearing, Applicant provided two additional documents, which were admitted without objection. (AE K, L)

Findings of Fact

In his Answer to the SOR, Applicant admitted all of the SOR allegations. (HE 3) He also provided extenuating and mitigating information. His admissions are accepted as findings of fact.

Applicant is a 48-year-old test electronic technician who has worked for his current employer, a defense contractor, since May 1991. (Tr. 15-17; GE 1) He graduated from high school in 1982, and he was awarded an associate's degree in computer engineering in 1984. (Tr. 18) He completed several employment-related courses over the years. (Tr. 18) He has never served in the military. (GE 1) He has held a security clearance since 1986. (Tr. 16)

Applicant was married from 1988 to 1997 and from 2001 to 2002. (Tr. 36-37) From 2002 to 2009, Applicant was in a relationship with a woman, and in 2009, they married. (Tr. 19-20, 30) Applicant has one son, who is 21 years old. (Tr. 19-20) His spouse is not employed outside their home because in 2010, she was diagnosed with multiple sclerosis. (Tr. 20, 25, 71) She is so disabled at times that Applicant must feed her and convey her from place to place in a wheelchair. (Tr. 70) His son is unemployed and living with his mother. (Tr. 20)

Financial Considerations

In 2004, Applicant's home was damaged in a hurricane, and Applicant needed to establish another household. (Tr. 27-28) He was the victim of poor contractor work. (Tr. 69) Applicant had substantial debt from his previous marriage. (Tr. 46) In April 2005, Applicant's debts were discharged under Chapter 7 of the Bankruptcy Code. (GE 6) From 2003 to 2010, Applicant was fully or partially supporting three grandchildren, his current spouse's two children, and his son. (Tr. 27, 29-31, 33-34, 45) He paid \$600 monthly in child support to his former spouse for his son's support. (Tr. 29) His former spouse owes Applicant \$6,800 because he made an overpayment to her. (Tr. 29) He had medical expenses of about \$8,000 per year that were not covered by insurance. (Tr. 31-32, 60) Applicant was unemployed from July 2005 to January 2006 and briefly in March 2010. (Tr. 30, 44)

Applicant's SOR alleges two delinquent debts, totaling \$34,112. The debt in SOR ¶ 1.a is a mortgage debt for \$138,000 that is delinquent in the amount of \$21,403. (Tr. 23; AE A) In 2007, Applicant refinanced his house and used the funds to pay a \$14,000 debt, which resulted when Applicant's former spouse failed to pay off a credit card (Tr. 35, 47) He had an expensive plumbing problem that needed repair. (Tr. 55) In late 2010, Applicant stopped making full payments on his mortgage because his spouse had medical problems. (Tr. 49) In 2011, his spouse was unable to work, and he stopped paying his mortgage. (Tr. 50, 54) In July 2012, the creditor filed a foreclosure action. (GE 5 at 12-20) In August 2012, Applicant filed a motion in state court to clarify the identity of the creditor. (Tr. 26; AE D) He is paying an attorney \$400 a month to litigate his mortgage debt. (Tr. 56) On October 5, 2012, Applicant retained counsel to assist with dispute of the mortgage debt for possible fraud and predatory lending practices. (Tr. 24; GE 5) Applicant wrote and asked the creditor to clarify the charges and amount of the debt because he believes he can resume payments and resolve the debt. (Tr. 24-26; AE D) He asserted the lender employed deceptive tactics when the loan was approved. (Tr. 57-58) His real estate taxes are current. (Tr. 58) After the hearing, Applicant began the process of applying for a mortgage modification. (AE L)

Applicant made 12 monthly payments of \$150 to address the debt in SOR ¶ 1.b for \$2,319. (AE C) On February 23, 2013, this debt was settled for \$1,250 and paid. (Tr. 22; AE C) Applicant also paid some non-SOR debts.

Applicant's annual income is about \$75,000; his monthly net income is about \$3,500; and his net monthly remainder is about \$1,300. (Tr. 51-55) After his hearing, he provided a budget. (AE K) He is very frugal and conscientious about avoiding unnecessary expenses. (Tr. 69)

Alcohol Consumption

In February 1991, Applicant had been drinking alcohol and driving. (Tr. 61) The police arrested him for driving under the influence of alcohol (DUI). (Tr. 61; SOR ¶ 2.c; SOR response) He pleaded guilty to reckless driving and the DUI charge was dismissed. (Tr. 61)

In October 2010, Applicant was arrested for DUI with a blood-alcohol content above .15 and for having an open container in his vehicle. (Tr. 42, 62-66; SOR ¶ 2.a; SOR response; AE J) On February 21, 2011, the court placed Applicant on probation for 12 months, he was ordered to pay a fine of \$1,659, to complete 75 hours of community service, to complete DUI School, to attend a victim-impact class, to submit to random drug screens, and to attend treatment. (AE J) DUI School involved 16 weeks of alcohol counseling. (Tr. 66) He successfully completed “30-something” drug screens and weekly alcohol-use tests. (Tr. 68) He did not consume alcohol during probation. (Tr. 67) His court-ordered alcohol evaluation diagnosed him with alcohol abuse. (SOR ¶ 2.b; SOR response)

On September 5, 2011, Applicant completed all probation requirements, and the court-ordered early termination of his probation. (Tr. 39; AE J) After his probation ended, he occasionally consumes “a couple of beers here and there.” (Tr. 67) He does not believe his alcohol consumption is a problem. (Tr. 67) He does not drive after consuming any alcohol. (Tr. 67)

Character Evidence

Applicant’s employer awarded Applicant certificates of achievement in 2008, 2010, 2011, and 2012 for his dedication and commitment to accomplishment of his employer’s goals. (AE F) His performance reviews indicated he was exceptionally diligent, fast, versatile, knowledgeable, and accurate. (AE F) Four supervisors or coworkers described him as an intelligent, capable, responsible, diligent, dedicated, conscientious, and honest employee. (AE G)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue her security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

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

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” and “(c) a history of not meeting financial obligations.” Applicant’s history of delinquent debt is documented in his SF 86, credit reports, OPM interview, SOR response, and statement at his hearing.

Applicant has a history of delinquent debt. After his unsecured, nonpriority debts were discharged under Chapter 7 of the Bankruptcy Code in April 2005, additional debts became delinquent and his mortgage continues to be delinquent. Applicant’s SOR alleges two delinquent debts, totaling \$23,542. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant’s conduct in resolving his debts warrants full application of AG ¶¶ 20(a) and 20(b). Unexpected medical and home repair bills, unemployment, divorce, illness, debts from his former spouse, and care for six children caused Applicant to have debts he could not afford to pay. His financial problems were affected by circumstances largely beyond his control. He paid one delinquent SOR debts, and he is working on getting his mortgage under a new payment plan.¹

¹ The Appeal Board has indicated that promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially

Two pertinent Appeal Board decisions illustrate the analysis for applying AG ¶¶ 20(a) and 20(b). In ISCR Case No. 09-08533 (App. Bd. Oct. 6, 2010), the applicant had \$41,000 in delinquent credit card debt and defaulted on a home loan generating a \$162,000 delinquent debt. *Id.* at 2. That applicant filed for bankruptcy the same month the Administrative Judge issued her decision. *Id.* at 1-2. The applicant in ISCR Case No. 09-08533 was recently divorced, had been unemployed for 10 months, and had childcare responsibilities. Her former husband was inconsistent in his payment of child support to her. The Appeal Board determined that AG ¶ 20(a) was “clearly applicable (debt occurred under such circumstances that it is unlikely to recur and [the debt] does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment)” even though that applicant’s debts were unresolved at the time the Administrative Judge’s decision was issued. The Appeal Board also decided that the record evidence raised the applicability of AG ¶ 20(b) because of the absence of evidence² of irresponsible behavior, poor judgment, unreliability, or lack of trustworthiness. *Id.* at 4.

Similarly, in ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009) the Appeal Board addressed a situation where an applicant had been sporadically unemployed and lacked the ability to pay her creditors, noting that “it will be a long time at best before he has paid” all of her creditors. The applicant was living on unemployment compensation at the time of her hearing. The Appeal Board explained that such a circumstance was not necessarily a bar to having access to classified information stating:

However, the Board has previously noted that an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his [or her] circumstances and develop a reasonable plan for repayment, accompanied by “concomitant conduct,” that is, actions which evidence a serious intent to effectuate the plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008).

ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009). The applicant in ISCR Case No. 08-06567 used his limited resources to (1) resolve some of his debts; (2) had a repayment plan for the remaining debts; and (3) took “reasonable actions to effectuate that plan.” *Id.* The Appeal Board remanded the Administrative Judge’s decision because it did not “articulate a satisfactory explanation for his conclusions,” emphasizing the Administrative Judge did “not explain[] what he believes that applicant could or should have done under the circumstances that he has not already done to rectify his poor financial condition, or why the approach taken by applicant was not ‘responsible’ in light of his limited circumstances.” *Id.*

responsible manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sept. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)).

² Applicant has the burden of proving the applicability of any mitigating conditions, and the burden to disprove a mitigating condition never shifts to the Government.

Partial application of AG ¶ 20(c) is warranted. Applicant did not provide proof of financial counseling; however, he generated a budget. His financial situation was damaged by unexpected bills, unemployment, divorce, illness, and care for six children. Although there is limited evidence of record that he established and maintained contact with his creditors,³ his financial problem is being resolved or is under control. He is attempting to renegotiate his mortgage in good faith, and once his mortgage is being paid, he will not have any delinquent debt.

AG ¶ 20(d) is partially applicable. Applicant admitted responsibility for and took reasonable and responsible actions to resolve his SOR debts, establishing some good faith.⁴ AG ¶ 20(e) is partially applicable. Applicant disputed some of the charges on his mortgage and asked a state court to resolve the dispute.

In sum, Applicant fell behind on his debts primarily because of insufficient income and to a lesser extent because of a myriad of financial problems, including unexpected bills, unemployment, divorce, illness, and care for six children. He paid one of his two delinquent SOR debts, and is bringing his mortgage to current status. Applicant has a sufficient monthly remainder as shown by his budget to maintain his financial responsibility. It is unlikely that financial problems will recur. His efforts are sufficient to fully mitigate financial considerations security concerns. Assuming, financial considerations concerns are not mitigated under AG ¶ 20, security concerns are mitigated under the whole-person concept, *infra*.

Alcohol Consumption

AG ¶ 21 articulates the Government's concern about alcohol consumption, "[e]xcessive alcohol consumption often leads to the exercise of questionable judgment

³"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

⁴The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

(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)).

or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness."

Seven Alcohol Consumption disqualifying conditions could raise a security or trustworthiness concern and may be disqualifying in this case. AG ¶¶ 22(a) - 22(g) provide:

(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

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

(e) evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program;

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

(g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

AG ¶¶ 22(b), 22(d), 22(f), and 22(g) do not apply. Applicant did not have any alcohol-related incidents at work, did not violate any court orders, and did not have a relapse after a diagnosis of alcohol dependence. There is no diagnosis of Applicant with alcohol dependence.

Applicant engaged in binge-alcohol consumption to the extent of impaired judgment on at least one occasion, when he was arrested for DUI in 2010.⁵ His

⁵Although the term "binge" drinking is not defined in the Directive, the generally accepted definition of binge drinking for males is the consumption of five or more drinks in about two hours. The definition of binge drinking was approved by the National Institute on Alcohol Abuse and Alcoholism (NIAAA) National Advisory Council in February 2004. See U.S. Dept. of Health and Human Services,

excessive alcohol consumption resulted in two arrests, convictions, and various penalties imposed by the courts. His court-ordered alcohol evaluation diagnosed him with alcohol abuse. AG ¶¶ 22(a), 22(c), and 22(e) apply.

Four Alcohol Consumption Mitigating Conditions under AG ¶¶ 23(a)-23(d) are potentially applicable:

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

(b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser);

(c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; and

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

AG ¶ 23(a) fully applies and AG ¶ 23(d) partially applies. Applicant has only one alcohol-related conviction—a DUI in October 2010. He completed alcohol counseling and he has not had an alcohol-related incident in 30 months. He is an excellent employee as shown by his evaluations and award certificates. His alcohol consumption is responsible, and he does not drive after consuming alcohol. The court issued an early termination of his probation because of his rehabilitation efforts.

Security clearance cases are difficult to compare, especially under Guideline G, because the facts, degree, and timing of the alcohol abuse and rehabilitation show many different permutations. The DOHA Appeal Board has determined in cases of substantial alcohol abuse that AG ¶ 23(b) did not mitigate security concerns unless there was a fairly lengthy period of abstaining from alcohol consumption. See ISCR Case No. 06-17541 at 3-5 (App. Bd. Jan. 14, 2008); ISCR Case No. 06-08708 at 5-7 (App. Bd. Dec. 17, 2007); ISCR Case No. 04-10799 at 2-4 (App. Bd. Nov. 9, 2007). For

NIAAA Newsletter 3 (Winter 2004 No. 3), <http://www.pubs.niaaa.nih.gov/publications/Newsletter/winter2004/NewsletterNumber3.pdf>.

example, in ISCR Case No. 05-16753 at 2-3 (App. Bd. Aug. 2, 2007) the Appeal Board reversed the administrative judge's grant of a clearance and noted, "That Applicant continued to drink even after his second alcohol-related arrest vitiates the Judge's application of MC 3."

In ISCR Case No. 05-10019 at 3-4 (App. Bd. Jun. 21, 2007), the Appeal Board reversed an administrative judge's grant of a clearance to an applicant (AB) where AB had several alcohol-related legal problems. However, AB's most recent DUI was in 2000, six years before an administrative judge decided AB's case. AB had reduced his alcohol consumption, but still drank alcohol to intoxication, and sometimes drank alcohol (not to intoxication) before driving. The Appeal Board determined that AB's continued alcohol consumption was not responsible, and the grant of AB's clearance was arbitrary and capricious. See *also* ISCR Case No. 04-12916 at 2-6 (App. Bd. Mar. 21, 2007) (involving case with most recent alcohol-related incident three years before hearing, and reversing administrative judge's grant of a clearance).

After careful consideration of the Appeal Board's jurisprudence on alcohol consumption, I conclude his successful completion of an alcohol-counseling program and his responsible alcohol consumption since October 2010, is sufficient to resolve my doubts about Applicant's alcohol consumption and to fully mitigate security concerns under Guideline G.

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.

The ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. AG ¶ 2(c). I have incorporated my comments under Guidelines F and G in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under Guidelines F and G, but some warrant additional comment.

Applicant is a 48-year-old test electronic technician, who has worked for his current employer, a defense contractor since May 1991. He was awarded an associate's degree in computer engineering in 1984, and has completed several

employment-related courses over the years. He has held a security clearance since 1986. Several circumstances beyond his control damaged his financial circumstances. His spouse is not employed outside their home because of disabling multiple sclerosis. In 2004, his home was damaged in a hurricane, and Applicant needed to establish another household. He was the victim of poor contractor work. He accrued substantial debt from his previous marriage, and in April 2005, his debts were discharged under Chapter 7 of the Bankruptcy Code. From 2003 to 2010, Applicant was fully or partially supporting six children. He had medical expenses of about \$8,000 per year that were not covered by insurance. Applicant was unemployed from July 2005 to January 2006 and briefly in March 2010. (Tr. 30, 44)

Applicant is sufficiently mature to understand and comply with his security responsibilities. He deserves substantial credit for supporting the U.S. Government as an employee of a contractor. There is every indication that he is loyal to the United States and his employer. There is no evidence that he abused alcohol after October 2010, when he had his one and only DUI, which resulted in a conviction. I give Applicant substantial credit for admitting responsibility for his delinquent debts and 2010 DUI in his SF 86, OPM PSI, responses to DOHA interrogatories, SOR response, and at his hearing. He received favorable endorsements from four supervisors or coworkers. He now has additional financial resources to ensure he can pay his debts.

Even though he lacked financial resources primarily because of unemployment, medical debts, divorce, child care responsibilities, and his spouse's medical problems, Applicant paid one of his two SOR debts. He is attempting to bring his mortgage to current status. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

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 has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has . . . established a plan to resolve his 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 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 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.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted).

Applicant is an intelligent person, and he understands how to budget and what he needs to do to establish and maintain his financial responsibility and how to drink alcohol responsibly. Moreover, he established a “meaningful track record” of debt repayment. The evidence supports the notion that he will maintain his financial responsibility.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole-person. I conclude financial considerations and alcohol consumption concerns are mitigated, and eligibility for access to classified information is granted.

Formal Findings

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

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a to 1.b: For Applicant

Paragraph 2, Guideline G: FOR APPLICANT

Subparagraphs 2.a to 2.c: For Applicant

Conclusion

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

Robert J. Tuider
Administrative Judge