DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
XXXXXXXXXX, XXXXX	)	ISCR Case No. 12-01005
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Fahryn Hoffman, Esq., Department Counsel
For Applicant: Kevin C. Ambler, Esq.

02/25/2014

Decision

TUIDER, Robert J., Administrative Judge:

Applicant mitigated security concerns pertaining to financial considerations and personal conduct. Clearance is granted.

Statement of the Case

On November 17, 2009, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On November 21, 2012, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F (financial considerations) and E (personal conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on January 28, 2013, and requested a hearing before an administrative judge. His answer was forwarded to the DOD CAF by his

counsel by cover letter dated February 1, 2013. Counsel's cover letter and Applicant's answer were received by the DOD CAF on February 4, 2013. Department Counsel was prepared to proceed on March 27, 2013, and I received the case assignment on April 2, 2013.

The case was conducted in four hearing sessions, the first two session days were held by video teleconference (VTC) on May 9, 2013 and May 14, 2013. The second two session days were held in person on August 1, 2013 and August 2, 2013. Four separate transcripts (Tr.) from each hearing day were prepared and have been marked Volumes (Vol.) I through IV, respectively.

The Government offered Government Exhibits (GE) 1 through 15. GE 1, 3, 6, and 12 were admitted without objection. However, Applicant objected to GE 2, 4, 5, 7, 8, 11, 13, 14, and 15 and they were admitted over Applicant's objection. (Tr. Vol. I, 36-60, 65-72, 93-95; Vol. II, 7-17.)

Applicant offered Applicant Exhibits (AE) A through AE HHH, which were received without objection. (Tr. Vol. I, 78, 80, 82-92; Vol. II, 17-18; Vol. III, 282-292.) Additionally, Applicant called four witnesses and testified on his own behalf. DOHA received the hearing transcripts for Volumes I through IV on May 17, 2013, June 3, 2013, August 13, 2013, and August 14, 2013, respectively.

Procedural and Preliminary Matters

Department Counsel noted that the debt alleged in SOR ¶ 1.d, a mortgage account for $68,767 that had gone into foreclosure in November 2007, had been settled and resolved. (Tr. Vol. I, 10-11; GE 5, GE 7, GE 8.) She further noted that the debts alleged in SOR ¶¶ 1.e, an unpaid mortgage account for $31,491, and 1.f, a 120 days past-due mortgage account for $31,491, are the same debt. (Tr. Vol. I, 11; GE 7, GE 8.)

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 2.e and 2.f, and denied the remaining allegations in SOR ¶¶ 1.a through 1.g and 2.a through 2.d. His admissions are incorporated as findings of fact. After a thorough review of the evidence, I make the following additional findings of fact.

Background Information

Applicant is a 61-year-old old site coordinator, who has been employed by a defense contractor since February 2002. He graduated from high school in June 1970. Applicant graduated from college in June 1975 with a bachelor of science degree in international affairs and history. Upon graduation, he was commissioned as a second lieutenant and honorably served 27 years as an Air Force fighter pilot until he retired from active duty in October 1997 as a lieutenant colonel. Applicant was awarded his

first security clearance in July 1971 and has successfully and continuously maintained a security clearance for the past 42 years to include clearances at the top secret level. (GE 1; Tr. Vol. II, 130-141, 255; Vol. III, Tr. 383; GE 15, AE BB.)

Applicant was married during the timeframe of 1978 to 1990. That marriage ended by divorce. During that marriage, Applicant and his former spouse adopted a daughter, who is now an emancipated adult. Applicant had a short second marriage from 1994 to 1996 that also ended by divorce. (GE 1, GE 3.)

Financial Considerations

The SOR identified seven separate allegations under this security concern. (SOR ¶¶ 1.a – 1.g.) As noted *supra*, the debt in SOR ¶ 1.d has been satisfied and the debts in SOR ¶¶ 1.e and 1.f are duplicates.

The SOR debts are divided into two categories. SOR ¶¶ 1.a, 1.b, 1.c, and 1.g are medical or utility-related debts and the remaining SOR ¶¶ 1.d, 1.e, and 1.f are real estate-related debts.

SOR ¶ 1.a – Medical collection debt in the amount of $1,051. Applicant notified treating hospital that he had primary and secondary coverage at the time he was admitted. The hospital billed the primary insurer, but neglected to bill the secondary insurer. The hospital sent the balance of the bill to collections. Applicant contacted the hospital and successfully disputed the bill. He submitted documentation from the hospital dated May 22, 2013, showing a zero account balance. **ACCOUNT RESOLVED**. (Vol. III, Tr. 395-401, 471-480; AE B, AE V, AE W, AE BBB.)

SOR ¶ 1.b – Medical collection debt in the amount of $257. Applicant is unaware of the medical services provided for this bill, but surmises that a doctor performed a service while he was hospitalized. To avoid further issues regarding this debt, Applicant paid it. Applicant submitted documentation from the collection agency dated June 4, 2013, showing a zero balance. **ACCOUNT RESOLVED**. (Vol. III, Tr. 401-404, 481-484; AE FFF.)

Applicant enjoyed excellent health during his Air Force and post-Air Force career. In early 2009, he was diagnosed with prostate cancer and is currently in remission. While in the Air Force, Applicant was covered by the military health care system. Post-Air Force, his health care costs were met by employer-sponsored health care insurance as primary coverage and TRICARE[1] as secondary coverage. Typically,

[1] TRICARE, formerly known as the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), is a health care program of the United States Department of Defense Military Health System. TRICARE provides civilian health benefits for military personnel, military retirees, and their dependents, including some members of the Reserve Component. TRICARE is the civilian care component of the Military Health System, although historically it also included health care delivered in the military medical treatment facilities. On October 1, 2013, TMA disestablished and TRICARE responsibility was transferred to the Defense Health Agency (DHA) which was established on the same day. http://3n.wikipedia.org//wiki/Tricare

this combined coverage provided Applicant with 100% medical coverage. (Vol. III, Tr. 381-387, 488-490; AE Z, AE AA – AE JJ.)

SOR ¶ 1.c – Cable bill company collection debt in the amount of $136. This company provided cable and internet service to Applicant's former condominium residence. Applicant testified that the service is linked with the unit and the occupant is responsible for payment. Applicant and condominium management notified the cable company when Applicant moved out of his condominium in September 2010; however, the cable company continued to bill him. Even though Applicant believed that he did not owe the bill, he contacted the cable company in early 2011 and made a settlement offer, which they rejected. On May 31, 2013, Applicant sent the cable company a letter disputing this debt and requested that it be removed from his credit report. He also notified the credit bureau that this is a disputed debt. Applicant has an ongoing good-faith dispute with this creditor. **ACCOUNT BEING RESOLVED.** (Vol. III, Tr. 403-408, 484-486, 490-491; AE GGG.)

The following three debts as well as several other non-alleged debts represent debts Applicant incurred following the real estate market crash last decade. Applicant called his financial advisor (FA) as a witness, who was a real estate broker for 8 ½ years and specialized in high-end properties. Applicant had invested in a beachfront luxury condominium development (CD) consisting of five towers built on U.S. Government leased land. A substantial benefit purchasers or investors derived from investing in CD, at least initially, was a zero property tax liability. The county began charging the condominium owners property tax that resulted in lawsuits by owners and investors. While litigation was ongoing, the CD's attorney counseled owners to ignore their property tax bills. In this regard, FA assisted Applicant and his clients with letters to their lender banks instructing them not to pay county property taxes while litigation was pending. (Vol. II, Tr. 141-152; Vol. III, Tr. 326-327.)

Contrary to Applicant's instructions, his lender bank paid the county property taxes. At the time Applicant met FA he had already purchased four CD units from the developer. One was his personal residence and the other three were investment properties. Applicant sought FA's counsel when his costs of maintaining four condominiums spiraled and became untenable. The condominium owners ultimately lost their lawsuit against the county in 2009. Applicant bought his personal residence in 2003 for $657,000 and by 2007; it had more than doubled with an appraised value of "between 1.5 and 1.6 (million dollars)." However, in October 2008 the real estate market bubble "burst" and numerous owners to include Applicant were unable to afford their homes or investment properties. In October 2008, Applicant sought FA's advice on an exit strategy because with his current cash flow, he could only keep his properties for "another two to three years" before he ran out of money. At the time Applicant approached FA in October 2008, he was current on all his payments. (Vol. II, Tr. 151-163, 185-189; Vol. III, Tr. 318-326, 340-351, 366-367; AE QQ, AE RR.)

FA advised Applicant that he had two options – continue making payments on his four properties until he ran out of money or attempt to sell them by short sale

following a “strategic default.” In FA’s opinion, a short sale was the preferred alternative versus an involuntary foreclosure. FA listed all four of Applicant’s properties and successfully sold all of them by short sale – the three investment condominiums in 2009 and Applicant’s personal condominium in 2010. The advantages of short sale were to avoid foreclosure and to be relieved of any deficiency between the sales price and the amount owed on the mortgage, late charges, and interest. The lender bank issued Form 1099-Cs, Cancellation of Debt, to Applicant for all four properties. Applicant also provided HUD Settlement Statements for all four properties. After following FA’s advice, Applicant was able to “walk away from all four properties, over $3.3 million in mortgages, without having to owe the bank any additional funds.” FA testified that Applicant’s strategic defaults were very difficult for him, but doing so was based on his advice as the “best decision” he could have made under the circumstances. (Vol. II, Tr. 163-178; Vol. III, Tr. 351-363, 515-519; AE M – AE T.)

During the course of providing financial advice to Applicant, FA became very familiar with Applicant’s budget and income stream. Applicant earned a substantial income between his military retirement, post-retirement employment, and investments and was fiscally responsible. When Applicant purchased his investment properties, he followed the advice of the condominium developer and lender bank about the soundness of the investment, which at the time, was a reasonable course of action. Numerous conservative buyers, to include FA himself, invested in the condominium development and lost money. FA added that he would have counseled Applicant to purchase the condominiums in 2003 based on what he knew at the time. FA stated that Applicant was “probably one of the most reluctant (sellers) to go through the short sale process” even though it was his only viable option. (Vol. II, Tr. 178-185, 189-191; Vol. III, Tr. 326-340, 378-380.)

SOR ¶ 1.d – Mortgage foreclosure debt in the amount of $68,767. Applicant is unable to explain the origin of this debt. It apparently relates to one of his four properties discussed *supra*; however, as noted all of those properties were sold through short sale, sales contracts were prepared, and Form 1099s were issued. Applicant contacted the lender bank and they were unable to shed any light on that debt appearing on his credit report and advised they would contact the credit bureau for corrective action. The documentation that Applicant provided demonstrates that his four properties were sold through short sale and the accounts zeroed out. As noted under **Procedural and Preliminary Matters**, *supra,* Department Counsel noted that this debt was settled and resolved. **ACCOUNT RESOLVED**. (Vol. III, Tr. 408-411, 414-417, 491-512; GE 6, AE H, AE K.)

SOR ¶ 1.e – Mortgage account debt in the amount of $31,491. The lender bank claims this is money owed for taxes they paid to the county assessor on Applicant’s condo. Before the lender bank incorrectly paid the county taxes, Applicant provided them with a court order dated June 6, 2005, issuing a stay on collection of real property taxes while the property tax lawsuit was pending. He also provided lender bank with a letter instructing them not to pay property taxes while the lawsuit was pending, discussed *supra*. Contrary to Applicant’s instruction, the lender bank paid the

county taxes and claimed Applicant owed them money paid for taxes. Applicant made numerous telephone calls to the mortgage company disputing this debt and eventually this debt was reported to the credit bureaus. Applicant discussed this debt with the OPM investigator during his background investigation. This debt was paid or resolved through the short sales process in 2010, discussed *supra* and it being reflected on Applicant's credit report appears to be an error. **ACCOUNT RESOLVED**. (Vol. III, Tr. 342-351, 363-376; AE QQ, AE RR.)

SOR ¶ 1.f – Mortgage account debt in the amount of $31,491. This is a duplicate of SOR ¶ 1.e, discussed *supra* in **Procedural and Preliminary Matters**. DUPLICATE DEBT – **ACCOUNT RESOLVED**.

SOR ¶ 1.g – Cable bill collection account in the amount of $207. After Applicant moved from his condominium, he lived for a short time in a rental property and established a cable company account that provided a "bundle" package. When he moved out of the property, he notified the cable company that he was terminating his account and was informed to return their equipment, which he did. The cable company claimed Applicant did not return their equipment and an ongoing dispute ensured. Applicant successfully prevailed and the cable company provided a letter dated May 17, 2013, advising that the account was zeroed out with an apology for any inconvenience they may have caused. **ACCOUNT RESOLVED**. (Vol. III, Tr. 412-414, 512-515; AE DDD.)

Applicant contests the notion that he lived beyond his means. Before he made his property investments, he "effectively (had) no other debts." After careful research, his plan was to invest in property and recoup his gains to use towards his retirement, but "[i]t didn't work out for me." (Vol. III, Tr. 376-378.) Other than the debts discussed above, which have been resolved, there is no record evidence that Applicant is in arrears on any other debts.

Personal Conduct

The SOR identified six separate allegations under this security concern. (SOR ¶¶ 2.a through 2.f.)

The personal conduct allegations are divided into two categories. SOR ¶¶ 2.a and 2.b allege falsification concerns that Applicant did not disclose January 1977 and December 2000 alcohol-related offenses as well as a November 2007 foreclosure, a $257 collection account, and a past-due mortgage account on his November 2009 e-QIP.

With regard to the alcohol-related offenses, when Applicant was queried why he did not list a January 1977 driving under the influence (DUI) arrest and a December 2000 DUI arrest when asked "Have you ever been charged with or convicted with any offenses related to alcohol or drugs?" He answered "yes" and listed a January 2007 DUI arrest in which all charges were dismissed and a November 2002 DUI arrest.

Applicant explained that he did not list the 1977 "arrest" because he was not arrested. He was issued a citation and was later fined $150, discussed *supra.* He listed this citation on two previous security clearance applications he completed in 1979 and 1988. Applicant testified that he was never charged or arrested for the January 1977 incident contrary to what is listed on his FBI rap sheet. Applicant explained that he did not list the 2000 DUI arrest because he was ultimately charged with reckless driving not DUI. He listed the 2000 DUI on a 2002 security clearance application and disclosed and discussed it during a March 2004 OPM interview. (Vol. III, Tr. 436-446, 459-461, 465-469; GE 12.)

With regard to his financial history, when Applicant was queried why he did not list a November 2007 $68,767 mortgage foreclosure when asked "Have you had any possessions or property voluntarily or involuntarily repossessed or foreclosed?," he responded none of his short sale properties had been voluntarily or involuntary repossessed or foreclosed in November 2009 when he completed his e-QIP. Applicant did not consider that any of his short sales he had undertaken in the summer of 2009 fell into the category of voluntary or involuntary repossessions or foreclosures. Applicant explained that FA identified buyers for his properties and sold them by short sale. This occurred after going through the "strategic default" process of not making payments for a short period of time with the full knowledge and cooperation of the bank. The properties were then sold to a known approved buyer. (Vol. III, Tr. 418-423, 426-427.)

When Applicant was queried why he did not list a $257 medical collection account and a $31,491 past-due mortgage account when asked "Have you been over 180 days delinquent on any debts?" and "Are you currently over 90 days delinquent on any debts?" He responded that the $257 medical collection account, discussed *supra,* did not go into collections until after he completed his November 2009 e-QIP. The past-due mortgage, also discussed *supra,* refers to the disputed property tax issue and as demonstrated by Applicant is a debt that he did not owe. Applicant explained that from 2002 to 2009, he was in a travel status "200 to 220 days a year." He acknowledged that he "missed mail at times," which was an unintended consequence of his work-related travel schedule. Applicant completed the e-QIP on an evening before a trip and stated, "all things considered, I thought I did a pretty accurate job of filling out the form." Applicant added that, "I'm not sure I could have deliberately not disclosed [mortgage debt] when it doesn't exist." Applicant's three investment condominiums had been resolved by September 2009 and his residence condominium did not go through the short sale process until 2010. The tax liability issue was also discussed, *supra.* (Vol. III, Tr. 423-436.)

Applicant explained that he has completed "seven or eight" security clearance applications over the past 42 years to include 10-year, 7-year, and 5-year updates and he has continuously held a security clearance during that entire time. Applicant has learned through the process of periodic reviews that everything previously submitted is a matter of record. Applicant noted that the security clearance applications typically ask for applicants to list events for the previous seven-year period, and at times has

found the questions to be unclear or ambiguous. Elaborating further and in discussing the question, "Have you ever been charged with or convicted of any offenses related to alcohol or drugs?," he stated, "Well, my mistake, I obviously misread this. When the entire form, 25 times, virtually every other question, it's a seven-year update, every other question says, "In the last seven years." Applicant had no intention to mislead or commit a deliberate falsification. He noted that he inadvertently did not list his former wife and his daughter on his e-QIP; however, his failure to do so was accepted as a mistake. Applicant discussed his alcohol-related incidents with the drug and alcohol therapist/master addictions counselor, discussed *infra.* (Vol. III, Tr. 446-459, 463-465, 519-521, 543-548; AE E.)

SOR ¶ 2.c – Alleges Applicant was arrested in January 1977 and charged with driving under the influence (DUI), found guilty, and ordered to pay a fine. In January 1977, while attending pilot training, Applicant was pulled over by the police after dinner and drinks with some of his classmates and was administered a breathalyzer test. Applicant testified that the police informed him that he was not intoxicated and issued him a traffic citation and a summons. The following week he went before a judge, was fined $150, and was allowed to keep his driver's license. Applicant reported the January 1977 incident as a "Traffic Violation" in Block 18 on his January 1979 security clearance application. He reported the January 1977 incident again as a DUI in Block 21.c on his October 1988 security clearance application. Both security clearance applications resulted in favorable adjudications. (Vol. II, Tr. 141, 210-214, 224-227; Vol. III, Tr. 521-523; GE 14, GE 15, AE C.)

SOR ¶ 2.d – Alleges Applicant was arrested in December 2000 and charged with DUI third conviction, plead nolo contendere, found guilty, and sentenced to pay a fine and placed on probation for 12 months. Applicant's FBI "rap sheet" was apparently the source of this information. Applicant testified that he was pulled over by the police before he left a convenience store parking lot for having a taillight out. He admitted to the police officer that he had been drinking and refused to take a breathalyzer test. Applicant explained that he refused to take a breathalyzer based on the advice of friends who were attorneys and doctors. Applicant testified that the SOR allegation was incorrect, and stated that at trial the charge was reduced to reckless driving, he plead nolo contendere, and was convicted of reckless driving. Applicant's copy of his official state driving record and Government arrest source documents confirm that his DUI was reduced to reckless driving and that he was convicted of reckless driving and not DUI. Applicant reported his 2000 arrest on a subsequent security clearance application as well as discussing it during a background investigation interview. (Vol. II, Tr. 262-268; Vol. III, Tr. 293-294, 459-462, 523-530; GE 9, GE 10, GE 12, AE D.)

SOR ¶ 2.e – Alleges Applicant was arrested in November 2002 and charged with DUI first offense, plead nolo contendere, was found guilty, and sentenced to pay a fine and placed on probation for 12 months. Applicant testified that he was pulled over by the police on the way home after having dinner. As noted *supra,* Applicant admitted this allegation. He stated that he had completed a security clearance application in March

2002 and discussed this arrest as well as the December 2000 arrest during a background investigation interview in March 2004. (Vol. II, Tr. 269; Vol. III, Tr. 292-303, 531-543; GE 3, GE 12.)

SOR ¶ 2.f – Alleges Applicant was arrested in January 2007 and charged with DUI blood alcohol content of 20% or higher. The case was dismissed. Applicant was coming home from a New Year's Eve party when he was pulled over by the police. When he went to court, the judge dismissed the case because of significant evidentiary problems with the state's case. Applicant's copy of his official state driving record confirms that the case was dismissed and there is no record of conviction. As noted *supra,* Applicant admitted this allegation. (Vol. III, Tr. 303-311; AE D.)

Applicant testified that he apprised his supervisors of the 2000, 2002, and 2007 incidents and no adverse action was taken against him. (Vol. Tr. 311-312.)

Applicant called a drug and alcohol therapist/master addictions counselor (DAT) as an expert witness. In March 2012, DAT prepared a comprehensive drug and alcohol evaluation on Applicant at the request of DOHA. DAT concluded that Applicant shows no signs of chemical dependency. DAT testified that Applicant is suitable for a security clearance where tact, wisdom, and critical thinking are involved. DAT provided extensive testimony in support of his diagnosis and conclusions.[2] (Vol. II, Tr. 19-54; AE E, AE F.)

Character Evidence

Applicant submitted his active duty Air Force officer performance reports (OPR) covering the period of November 1976 to July 1996, one citation for an Air Force Achievement Medal citation, one citation for an Air Force Commendation Medal, and five separate citations for the Meritorious Service Medal. His OPRs, awards, and statements document a 27-year career of sustained superior performance. Applicant described his military and post-military career in detail at his hearing. His accomplishments and contribution to the national defense are significant. (Vol. II, Tr. 227-262; GE 6, AE TT through AE AAA.)

Applicant called two character witnesses to testify on his behalf. Witness 1 (W-1) is a co-worker and holds a security clearance. He stated that Applicant has a key company role in the manufacturing of military flight simulators. W-1 has worked with Applicant in close proximity for two years in a classified environment and found him to be very trustworthy and also found his conduct to be above reproach in a work setting as well as in a social setting. Witness 2 (W-2) W-2 is also a co-worker and holds a security clearance. He has also worked with Applicant in close proximity for one and one-half years in a classified setting. W-2 echoed similar testimony as W-1. Both W-1

[2] There are no Guideline G (alcohol consumption) security concerns alleged. To the extent that any of the Guideline E allegations raised an alcohol-related issue or concern, the expert witness, DAT, effectively and successfully rebutted them.

and W-2 strongly recommend Applicant for a security clearance. (Vol. II, Tr. 196-210, 217-224.)

Applicant testified that he is the only company employee who is able to perform the work he does, which is done in a highly classified environment. (Vol. III, Tr. 312-317.)

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." In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

> It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply. (internal citation omitted).

Applicant's credit reports reflect the alleged debts. 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) through (20(e). The unexpected decline in the value of real estate, increase in association fees, and subsequent requirement for condominium owners to pay county property taxes caused Applicant to have debts he could not afford to pay. His real estate problems were clearly affected by circumstances beyond his control. Applicant presented credible evidence that his decision to invest in CD was reasonable at the time based on available information. Unfortunately, Applicant's real estate investments in CD did not net the expected results. Recognizing that his situation had made a turn for the worse, he sought professional advice and made the painful choice of letting his four properties go into strategic default. The end result was that Applicant owes the lender bank no money and was issued Form 1099s for all four properties.

Applicant has settled, paid, or disputed in good-faith the remaining non-real estate related debts. While one can debate the timeliness of the resolution of some of these debts, I recognize that coordination of health care benefits does take time and the fact that Applicant may not have been aware that several of these debts were in arrears. When he did become aware his debts were delinquent as a result of these proceedings, he took appropriate and reasonable corrective action.

The Appeal Board explained that circumstances beyond one's control can cause unresolved debt, and are 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). Applicant took reasonable and responsible actions to resolve his SOR debts, establishing good faith.[3] He established and maintained contact with his creditors.[4] His financial problem is resolved, and his finances are under control. Applicant has learned from his financial mistakes, they are unlikely to recur; and they do not cast doubt on his current reliability, trustworthiness, or good judgment. His efforts are sufficient to fully mitigate financial considerations security concerns.

Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

---

[3]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) 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)).

[4]"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.

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

AG ¶ 16 describes four conditions that could raise a security concern and may be disqualifying with respect to the alleged falsifications of documents used to process the adjudication of Applicant's security clearance in this case:

> (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;
>
> (b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;[5]
>
> (d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:
>
> (1) untrustworthy or unreliable behavior . . . ;
>
> (2) . . . inappropriate behavior in the workplace;

---

[5]The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

> (a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

(3) a pattern of dishonesty or rule violations; or

(4) evidence of significant misuse of Government or other employer's time or resources; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing.

I find Applicant’s statements explaining why he did not provide derogatory financial information and two alcohol-related incidents to be credible. His omissions and misstatements were errors made through carelessness and oversights. Applicant has successfully and continuously held a security clearance for 42 years. He has completed seven or eight security clearance applications and undergone numerous background checks. Applicant knows that all of his past alcohol incidents are a matter of record and he reported the ones he believed were required on his November 2000 e-QIP. I note that he listed two past alcohol incidents on his November 2009 e-QIP putting the Government on notice that he had previous issues with drinking and driving.

Applicant’s explanation that he believed his debts were resolved or was unaware of alleged debts is equally credible. I also note within the same e-QIP, he neglected to list other required information further supporting his assertion that his omissions were careless, but not deliberate. While Applicant could reasonably have been expected to be more diligent about checking the status of his debts and reporting his past alcohol offenses, his judgment lapses are not enough to impute knowing and wilful falsification under Guideline E. He refuted the allegations that he intentionally falsified his November 2009 e-QIP. He regrets his mistakes and has been chastened by this process. Applicant would not make the same mistakes today.

SOR ¶¶ 2.c through 2.f alleges four alcohol-related in 1977, 2000, 2002, and 2007. These incidents were thoroughly discussed, *supra.* The 1977 incident appears not to have been an actual “arrest” and the 2007 incident resulted in a dismissal. As noted*,* to the extent these allegations raised alcohol consumption concerns; they were rebutted by the expert witness, DAT. *See* fn 2 *supra.* To the extent these incidents with three, two, and five-year gaps between them, respectively, with the most recent incident in 2007 that resulted in the charge being dismissed, raised additional concerns under this Guideline, such concerns were effectively rebutted by Applicant. Applicant complied with all court-imposed requirements and he notified his superiors of his DUI arrests. Given the significant collective contributions Applicant has made towards the national defense and time elapsed between incidents and lack of recency of these offenses, I find these events to be of limited security significance.

AG ¶ 17 provides three conditions that could mitigate security concerns in this case:

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

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability.

AG ¶ 17(a) applies to the allegations in SOR ¶¶ 2.b to 2.d. Applicant did not arguably provide all derogatory financial information and all information pertaining to past alcohol-related incidents on his November 2009 e-QIP. He fully discussed the missing information during subsequent OPM investigative interviews, DOHA interrogatories, and during his DOHA-sponsored drug and alcohol assessment. AG ¶ 17(e) fully applies to the four alcohol-related incidents *supra.*

In the instant case, Applicant disclosed the omissions, and he fully cooperated with the investigator's follow-up interrogation. Applicant's failure to provide derogatory financial information about his debts and his failure to fully disclose his alcohol-related arrests on his November 2009 was improper. If he failed to disclose this information, he did so out of carelessness and not with the intent to deceive the Government or he did not believe he was required to disclose the information. He disclosed the missing information during a subsequent OPM interview and corrected the omissions in good faith. His disclosure of the information eliminated any vulnerability to exploitation, manipulation, or duress. Guideline E concerns are mitigated; however, assuming AG ¶¶ 17(a), 17(e), and 17(f) are not applicable, security concerns are separately mitigated under the whole-person concept, *infra.*[6]

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

---

[6]In ISCR Case No. 09-05655 at 2 (App. Bd. Aug. 24, 2010), the applicant intentionally denied that he had private employment on his security clearance application (SCA) to conceal that employment from his employer. Fifty-one days later, ISCR Case No. 09-05655 at 5 (A.J. May 12, 2010), at his OPM interview, he "(1) corrected the omission in his SCA without first having been confronted with the facts; and (2) cooperated with the follow-up questioning by the investigator." ISCR Case No. 09-05655 at 2 (App. Bd. Aug. 24, 2010). The underlying security concern about that applicant's private employment was resolved when he resigned from that company. He also received some positive character references. The Appeal Board affirmed the mitigation of the intentional and recent falsification of his SCA under the whole-person concept without ruling on the applicability of AG ¶ 17(a).

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

Applicant is a 61-year-old site coordinator, who works for a defense contractor who that provides important work for DOD. He was awarded a bachelor of science degree in 1975. Before starting his second career as a defense contractor, he honorably served 27 years as an Air Force fighter pilot. He is sufficiently mature to understand and comply with his security responsibilities. He deserves substantial credit for his military service and supporting the U.S. Government as an employee of a defense contractor. There is every indication that he is loyal to the United States and his employer. He has had access to classified information for 42 years and there are no allegations of security violations. The unprecedented and unforeseen decline in real estate values contributed to his financial woes. I give Applicant substantial credit for seeking professional help to resolve his real estate-related problems and working aggressively to resolve his non-real estate debts. He received strong favorable endorsements from his employer and co-workers. His character witnesses described Applicant as personable, honest, knowledgeable, professional, compliant with rules, trustworthy, and loyal.

Applicant lacked financial resources and needed to resort to short sales to clear his four mortgage debts. He also paid, settled, or disputed in good-faith his remaining non-real estate debts. 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). He has since regained financial responsibility and lives a lifestyle consistent within his means. Applicant is an intelligent person, and he understands what he needs to do to maintain his financial responsibility. I am confident 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 personal conduct concerns are mitigated. 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.g:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a to 2.f:	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