



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



In the matter of:)
)
) ISCR Case No. 15-03319
)
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel
For Applicant: *Pro se*

07/31/2017

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense's (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. The Statement of Reason (SOR) listed 12 collection or charged off delinquent obligations, which totaled more than \$16,000. He has yet to address his delinquent financial obligations. In 2009 and 2012, he was convicted of driving while intoxicated. He has not mitigated the financial considerations, criminal conduct, and alcohol consumption security concerns. Clearance is denied.

Statement of the Case

On March 24, 2016, acting under the relevant Executive Order and DoD Directive,¹ the DoD issued a Statement of Reasons (SOR) detailing financial considerations, criminal

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006, and as amended on June 8, 2017.

conduct, and alcohol consumption security concerns. DoD adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. On April 1, 2016, Applicant answered the SOR and requested a hearing. On May 18, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for a hearing convened on June 9, 2016.

At the hearing, Government's Exhibits (Ex.) 1 through 6 were admitted without objection. Applicant testified but did not submit any documents. The record was kept open to allow Applicant to present documents. No documents were received. On June 21, 2016, DOHA received the hearing transcript (Tr.).

While this case was pending a decision, the Director of National Intelligence (DIN) issued Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the Sept. 1, 2006 AGs and are effective "for all covered individuals" on or after June 8, 2017. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.²

Procedural History

Department Counsel moved to amend the SOR by changing the subparagraph numbers in SOR ¶ 3.a from "1.a through 1.c., above" to "2.a through 2.c., above." Applicant did not object to the motion, which was granted. (Tr. 12)

Findings of Fact

In Applicant's Answer to the SOR (SOR Answer), he admitted the delinquent obligations, but asserted he had recently paid the debt in SOR 1.k (\$395) and was making payments on his child support obligation listed in SOR 1.h (\$3,186) and the debt listed in SOR 1.a (\$7,737). He admitted the criminal activity and neither admitted nor denied the alcohol consumption allegations. Applicant's admissions are incorporated as factual findings. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact.

Applicant is a 33-year-old data collector who has been employed by a defense contractor since March 2014. (Ex. 1, Tr. 14) He is seeking to obtain a security clearance. He has had three periods of unemployment in the recent past. He was unemployed for six months from October 2013 through March 2014, for seven months from August 2012 through February 2013, and for ten months from January 2011 through October 2011. (Exs. 1 and 6) One period of unemployment resulted from his decision to move closer to

² Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case. The new AGs are available at http://ogc.osd.mil/doha/5220-6_R20170608.pdf.

his son's location. (Tr. 27, 78) He had been employed in another state. (Tr. 26) Another period of unemployment resulted from the company he worked for going out of business. (Tr. 27) The third period of employment resulted from losing his job because he lost his driver's license. (Tr. 59)

Applicant has an eight-year-old son with his prior wife, a three-year-old son with his current wife, and his current wife has two additional children. (Tr. 83) All of his most recent jobs have been temporary jobs. (Tr. 82) His wife works full time and makes \$700 every two weeks. (Tr. 69)

Applicant served in the U.S. Army National Guard from September 2004 through September 2009. (Tr. 21) He was an E-4 at the time of his honorable discharge. In 2005, his National Guard unit was called up for three month of duty during the aftermath of Hurricane Katrina. (Tr. 24) From October 2008 through July 2009, he served in Iraq. (Tr. 14) The U.S. Department of Veterans Affairs (VA) rates Appellant's disability at 50 per cent for post-traumatic stress disorder. (Tr. 57) His disability pay is approximately \$1,300 monthly. (Tr. 57)

In September 2009, when Applicant's National Guard unit returned from Iraq, he was staying in a hotel where the unit was having a return ceremony. (Ex. 6) After the ceremony, he and three or four members from his squad went out drinking. (Tr. 24) He got lost on the way back to the hotel. He pulled off the road to determine how to proceed when a highway patrolman pulled up. The officer noticed the odor of alcohol. Applicant said he had only had one drink and one beer, but his blood alcohol content (BAC) was .12. (Ex. 6) He had also recently learned his wife was seeing other men while he was deployed overseas.

Applicant was arrested for driving under the influence of alcohol (DUI), found guilty, fined \$1,000, sentenced to 270 days confinement (suspended), sentenced to probation for nine months, and required to install an interlock device on his vehicle. (Ex. 6, Tr. 16) He still has the interlock device on his vehicle. (Tr. 57, 80) The interlock device must stay on the vehicle for four years from the date installed. (Tr. 64) It was first installed in early 2016. (Tr. 64) Had he known of the four-year requirement, he would have had it installed much earlier. (Tr. 64)

In June 2012, Applicant's ex-wife had taken his son and did not tell him his son's location. Applicant consumed a 6-pack of beer and was stopped while going to the store to purchase more beer. (Tr. 56) He was charged with DUI and driving on a cancelled, suspended, or revoked license. (Tr.64) He did not know his license had been suspended until he was stopped. (Tr. 63) He was found guilty of DUI, fined \$3,000, sentenced to one year in jail (suspended), required to attend DUI class, attend probation, complete 25 hours of community service, and had his driver's license suspended until 2017. Probation required him to check in monthly and pay a \$55 fee. (Tr. 40) He asserted he has completed his community service requirement. (Tr. 40) At the hearing, Applicant showed his current driver's license, which had been issued in October 2015. (Tr. 69) The sentence

was deferred for five years. (Tr. 16) He had agreed to pay \$100 monthly on the fine. (Tr. 16)

Applicant's profession was truck driving and he made good money driving in the oil fields. (Tr. 23, 82) However, when he lost his license he also lost his commercial driver's license (CDL), which greatly affected his income. (Tr. 82) His CDL has been reinstated. (Tr. 61) However, the required interlock device means Applicant can only drive his vehicle and is prevented from driving a company's vehicle. (Tr. 83) This requirement limits his job possibilities as a professional truck driver.

Because of Applicant's financial problems, he was unable to pay for the required DUI class. (Ex. 6) The class cost \$360 and an additional amount was charged for the victim's impact panel (VIP). (Tr. 65) In May 2013, a bench warrant was issued for his failure to comply with the court directions concerning his 2012 DUI. In June 2013 and July 2014, additional bench warrants were issued for failure to appear. He stated he was living two hours away from the court, did not have a car or driver's license, and had no other way to get to court. (Tr. 42) He asserted he called the court and told them of his problems of getting to court, but the bench warrants were still issued. (Tr. 42)

Applicant stated when he was able to attend court, he had \$460 remaining to pay on his \$3,000 fine and obtained a new payment schedule. At that time his probation was extended. (Ex. 6) He asserted he attended DUI class twice a week for six weeks. (Tr. 41) He asserted he had documentation on his attendance at the most recent DUI class. (Tr. 55) No documentation concerning class attendance was received.

In Applicant's SOR Answer, he admitted to the criminal activities listed in the SOR. He indicated he had paid all the fines for his 2009 DUI and was current on his payments for the 2012 DUI. (SOR Answer, Tr. 66) He also stated he had appeared in court and resolved the bench warrants. He provided no documentation showing his payments were current, he had completed DUI class, or that his bench warrants had been resolved.

In Applicant's April 2014 Electronic Questionnaires for Investigations Processing (e-QIP) he listed two delinquent obligations: a cell phone service debt (SOR 1.c, \$1,244) and past-due child support (SOR 1.h, \$3,186). (Ex. 1, Tr. 34) He also listed his September 2009 and June 2012 DUI convictions. (Ex. 1) Department Counsel acknowledged Applicant was paying his child support as agreed and had significantly reduced the balance. (Tr. 13) As of May 2016, the delinquent amount had been reduced to \$1,900. (Ex. 4) Applicant asserted he is current on his support payments, but provided no documentation corroborating that assertion. (Tr. 36) He asserted that a wage assignment of \$75 weekly comes from his pay. (Tr. 37)

Applicant is now in a custody dispute concerning his son. He has hired an attorney who is charging him \$4,000 to handle the matter. (Tr. 37)

In Applicant's June 14, 2014 Enhanced Subject Interview, he stated he was approximately \$3,800 behind in his child support obligation (SOR 1.h, \$3,186). (Ex. 6) He

stated he was behind because he was not working continuously. When working his wages are garnished and his tax refunds intercepted and applied to his past-due child support debt amounts. (Item 6) He stated he had a \$753 telephone service debt (SOR 1.c, \$1,244). He stated he did not intend to pay this phone bill because he had been double charged for some items and charged for equipment and services he did not receive. (Ex. 6) He asserted he had emails from the company saying the debt had been investigated and the overcharging was the company's fault. (Tr. 50)

Applicant incurred a second delinquent obligation (SOR 1.e, \$388) for cell phone service. He asserted he was current when the service provider terminated his service due to too many roaming fees. (Ex. 2, 6) He was working in the oil fields, and the service provider did not have cell-phone coverage for the area resulting in high roaming fees. (Ex. 6, Tr. 52) He does not intend to pay the bill.

When Applicant was discharged from the National Guard, he was informed he was indebted to Defense Finance and Accounting Service (DFAS) for \$7,737 (SOR 1.a), the initial amount had been \$10,690. (Ex. 4, Tr. 45) While stationed overseas, he had two emergency trips home due to his father's cancer and then death. (Tr. 30, 71) The Red Cross paid for the emergency travel, and he has to reimburse the travel costs. (Item 6) He agreed the DoD would intercept his income tax returns until the debt was paid. His last payment on the debt was in March 2013, when his tax refund was intercepted. (Tr. 45) In 2012, he had made a few monthly payments of \$50 each on the debt. (Tr. 46)

Applicant owed \$1,879 (SOR 1.b) for an apartment debt. (Ex. 6) He was current on his rent when he left and speculated this debt might be for clean-up costs. His monthly rent was \$620, and he believed he did not owe anything when he left because he had provided the first and last month's rent when he moved into the apartment. (Tr. 33) In 2013, another apartment debt (SOR 1.d, \$470) was incurred when he moved from the apartment a month before the lease terminated. (Ex. 6, Tr. 34) The company had changed the locks, and he was unable to recover his furniture or personal goods. (Tr. 36) He does not believe he owes the debt and does not intend to pay it. (Ex. 6)

The debt listed in SOR 1.f (\$210) was a loan obtained by Applicant's ex-wife and used to hire an attorney. (Ex. 6) During his interview, he said he did not intend to pay the debt. The debt in SOR 1.i (\$130) is from a fitness company for gym fees. Applicant does not recognize this debt. (Tr. 39) He once had a membership to the gym, but has not belonged to a gym in a number of years. (Ex. 6, Tr. 53) He has not received any collection calls or letters from this creditor. (Ex. 6)

The debt in SOR 1.j (\$524) was overdraft fees incurred when Applicant's ex-wife took the money from their joint account without informing him of her actions. (Ex. 6, Tr. 38) He sees the debt as his ex-wife's debt. The bank debt (SOR 1.k, \$395) was a joint debt, which he stated he had recently paid. (Ex. 6, Tr. 38) He stated he remembered getting a letter stating the debt had been paid. (Tr. 48) At the hearing, he stated he could possibly get a statement to show the debt had been paid. (Tr. 47) He provided no documentation showing payment of the debt. He does not believe the medical debt (SOR

1. I, \$78) is his debt. (Ex. 6, Tr. 38) He owes the cable company (SOR 1.g, \$133) and intends to pay the debt when he is able. (Ex. 6) The cable bill was the result of him not returning the cable company's equipment. He was unable to return the equipment because he had been locked out of the apartment by the apartment management. (Tr. 36) Applicant asserted much of the paperwork related to his debts was lost when he was locked out of his apartment. (Tr. 53)

At the hearing, Applicant claimed to have paid one debt and was making payment on two additional delinquent obligations. Department Counsel pointed out Applicant did not submit any corroborating documentation as to payment on these obligations. (Tr. 14) Applicant indicated he had documentation to support his allegation and would submit the material following the hearing. (Tr. 68) No material was received. To Applicant's credit, he acknowledged he had made irrational and hasty decisions in the past, but was attempting to correct what he had "messed up." (Tr. 18) He indicates he is a hard-working individual trying his best to do what is right. (Tr. 80) He has made the decision not to drink alcohol again. (Tr. 74) He has obtained some counseling from the VA center at the closest Army post. (Tr. 56)

Policies

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the adjudication process is an examination of a sufficient period and a careful weight of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is known as the whole-person concept.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination of the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

Failure 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 or sensitive information . . . An individual who is financially overextended is at greater risk of having to engage in illegal acts or other questionable acts to generate funds.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

AG ¶ 19 included three disqualifying conditions that could raise a security concern any may be disqualifying in this case: “(a) inability to satisfy debts;” “(b) unwillingness to satisfy debts regardless of the ability to do so;” and “(c) a history of not meeting financial obligations.”

The Government's substantial evidence and Applicant's own admissions raise security concerns under AG ¶¶ 19(a), 19(b) and 19(c). Applicant had owed approximately \$16,000 on 12 delinquent obligations. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005).

Five of the seven Financial Considerations 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, a death, divorce or separation, clear victimization by predatory lending practices or identity theft), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to 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 admitted owing the delinquent obligations except for SOR 1.k (\$395), which he asserted he had paid. He also said he was making payment on two additional delinquent obligations. The majority of his debts remain unpaid. The DFAS debt occurred under unusual conditions because he had to return twice from his overseas deployment due to his father's illness and then death. The other delinquent obligations were not incurred under unusual conditions and the failure to timely pay those obligations is not an unusual condition that is unlikely to recur.

Applicant asserted he had documentation corroborating his statement that he had addressed a number of the delinquent obligations. He asserted some of the documentation related to his debts was lost when he was locked out of his apartment. He provided insufficient evidence to conclude that his financial problems are unlikely to recur.

His delinquencies continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

In 2012, Applicant divorced, he was unemployed for ten months from January 2011 through October 2011, for seven months from August 2012 through February 2013, and for six months from October 2013 through March 2014. His divorce, unemployment, and having to return from overseas due to his father's illness and death were circumstances beyond his control that impacted his ability to maintain financial stability. However, the mitigating impact of his divorce is reduced because it occurred almost five years ago and the mitigation from his periods of unemployment was offset by him being employed since March 2014. The delinquent obligations have yet to be addressed. He provided no documentary evidence of what responsible steps he took to pay or resolve his debts. The second prong of AG ¶ 20(b) does not apply.

There is no evidence of financial counseling or clear indications that Applicant's financial problems are being resolved or are under control. AG ¶ 20(c) does not apply to the majority of his delinquent obligations. He has brought his child support obligation current. There is no showing of Applicant having made good-faith payments towards his other delinquent obligations or evidence to establish that he is executing a reasonable ongoing plan to pay or resolve his debts. In 2012, he made a few monthly payments of \$50 each, and in 2013 his tax refund was intercepted and applied to his DFAS debt. He has not made any payments on his debts since 2013. He said he paid his bank debt, but provide no documentation showing he had done so. AG ¶ 20(d) does not apply.

Applicant asserted reasons why he believed he did not owe a number of the delinquent accounts. However, he admitted all the debts except for the bank debt, which he said he paid. He has not provided documented proof to substantiate the basis of the disputes over these debts. AG ¶ 20(e) does not apply.

There is no documentary evidence Applicant has contacted his creditors and been able to establish repayment agreements with his creditors, except for this child support obligation which he brought current. An applicant is not required to be debt-free or to develop a plan for paying off all debts immediately or simultaneously, but he is required to act responsibly given his 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).

What constitutes the responsible behavior depends on the facts of a given case. Applicant's poor financial condition originated in part from periods of unemployment and, as he stated, he made some irrational and hasty decisions in the past, which he was attempting to correct. Applicant must establish a plan to resolve financial problems and take significant action to implement the plan, which he has not done.

Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct, "Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations."

AG ¶ 31 lists two conditions that could raise a security concern and may be disqualifying in this case including:

- (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and
- (b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

AG ¶¶ 31(a) and 31(b) apply. The SOR alleges and the record establishes Appellant was found guilty of a 2009 DUI and a 2012 DUI.

AG ¶ 32 describes conditions that could mitigate security concerns including:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) no reliable evidence to support that the individual committed the offense; and
- (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

None of the mitigating conditions fully apply. He asserted he complied with the court orders related to his two DUIs and that he was current on his payments. However, he failed to provide documentation corroborating his compliance. His most recent DUI occurred when his ex-wife prevented him from seeing his son. He is currently in a custody dispute concerning his son and has employed the assistance of an attorney. But it is

uncertain at this time if his ex-wife will continue to cause him problems. It is impossible to say problems with his ex-wife are unlikely to recur or that the stress and pressure she has caused Applicant are no longer in his life. His most recent DUI occurred in 2012, but the most recent bench warrant was issued in July 2014. His DUI's and bench warrants creates doubt about his judgment, reliability, and trustworthiness, and raises questions about his ability or willingness to comply with laws, rules and regulations. More time must elapse without violations of criminal laws before there is enough assurance that criminal conduct is unlikely to recur.

Alcohol Consumption

AG ¶ 21 articulates the Government's concern about alcohol consumption, "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."

AG ¶ 22 lists two conditions that could raise a security concern and may be disqualifying in this case including:

- (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 the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder; and
- (c) habitual or binge consumption of alcohol³ to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder.

Applicant was convicted of DUI in 2009 and 2012. AG ¶¶ 22(a) and 22(c) apply.

AG ¶ 23 list four conditions that could potentially mitigate security concerns include:

- (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 judgment;
- (b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has

³ Although the term "binge" drinking is not defined in the Adjudicative Guidelines, the generally accepted definition of binge drinking for males is the consumption of five or more drinks in about two hours, which brings a person's blood alcohol concentration (BAC) to 0.08 grams percent or above. 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, NIAAA Newsletter 3 (Winter 2004 No. 3), <http://www.pubs.niaaa.nih.gov/publications/Newsletter/winter2004/NewsletterNumber3.pdf>

demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;

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

(d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Applicant did not provide enough information to establish mitigation. He did not describe any alcohol-related treatment or counseling. He stated he attended DUI class, but provided little information about the nature of the class or what he learned from it. He stated he stopped drinking after his second DUI in 2012, but provided little information as to his reasons for this decision or corroborating statements that he was abstaining from alcohol consumption. More time without an alcohol-related incident or binge-alcohol consumption or completion of an alcohol counseling program, or corroborating statements that he was abstaining from alcohol consumption is necessary to resolve my lingering doubts about Appellant's current reliability, trustworthiness, and good judgment. Alcohol consumption security concerns are not mitigated.

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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the "ultimate determination" of whether to grant eligibility for a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant honorably served in the U.S. Army National Guard from September 2004 through September 2009. From October 2008 through July 2009, he was deployed to Iraq, a qualified hazardous duty area entitling

him to receive hostile fire pay or imminent danger pay. The VA rates his disability at 50 per cent for post-traumatic stress disorder. His military service in harm's way in support of the United States military merits considerable respect.

Applicant's most recent DUI occurred in 2012, which is neither remotely distant in time nor very recent, but the July 2014 bench warrant is more recent. Additional time and more information as to successful rehabilitation could mitigate the criminal conduct and alcohol consumption concerns.

Applicant has yet to address the majority of his delinquent obligations. The issue is not simply whether all his debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. See AG ¶¶ 2(c) and 2(d). Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. Clearance is denied.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the amended SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Financial Considerations: AGAINST APPLICANT

Subparagraphs 1.a – 1.g: Against Applicant

Subparagraph 1.h: For Applicant

Subparagraphs 1.i – 1.l: Against Applicant

Paragraph 2, Criminal Conduct: AGAINST APPLICANT

Subparagraphs 2.a – 2.e: Against Applicant

Paragraph 3, Alcohol Consumption: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge