



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



In the matter of:

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ISCR Case No. 15-07580

Applicant for Security Clearance

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel

For Applicant: *Pro se*

02/02/2017

Decision

Harvey, Mark, Administrative Judge:

Applicant's most recent arrest involving his excessive alcohol consumption was in November 2008. He reduced his alcohol consumption, and he drinks alcohol responsibly. His 2016 credit reports indicate he has a good credit score, and he has numerous entries showing debts paid or paying as agreed. Alcohol consumption and financial considerations security concerns are mitigated. From 1996 to May 2014, Applicant committed six misdemeanor-level criminal offenses. His driver's license will be restricted until 2018. Criminal conduct security concerns are not mitigated. Access to classified information is denied.

History of the Case

On February 11, 2015, Applicant completed and signed an Electronic Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On May 6, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued an SOR to Applicant pursuant to Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry*; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), which became effective on September 1, 2006.

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance

for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. (Hearing Exhibit (HE) 2) Specifically, the SOR set forth security concerns arising under Guidelines J (criminal conduct), G (alcohol consumption), and F (financial considerations).

On June 15, 2016, Applicant responded to the SOR. On August 8, 2016, Department Counsel was ready to proceed. On August 31, 2016, the case was assigned to me. On November 17, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for December 6, 2016. (HE 1) Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered six exhibits; Applicant offered nine exhibits; and all exhibits were admitted into evidence without objection. (Transcript (Tr.) 17-22; GE 1-6; Applicant Exhibits (AE) A-I) On December 14, 2016, DOHA received a copy of the transcript of the hearing.

Findings of Fact

In Applicant's SOR response, he admitted the SOR allegations in ¶ 1.a, 1.b, 1.d, 1.e, 2.a, 2.b, 3.a, 3.b, and 3.c. He also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact.

Applicant is a 48-year-old employee of a defense contractor, who has worked as a manager for teams installing wireless communications. (Tr. 6, 10; GE 1) In 1986, Applicant graduated from high school. (Tr. 6) In 1990, he received a bachelor's degree in economics with a minor in marketing, and in 1992, he received a master's degree in marketing education. (Tr. 7-8)

In 2001, Applicant married, and in 2002, his spouse passed away. (Tr. 8) In 2006, he married, and in 2007, he divorced. (Tr. 9) He has an 18-year-old son, and his child support of \$200 monthly is current. (Tr. 9) He never served in the U.S. military. (Tr. 8) There is no evidence of security violations.

Criminal Conduct and Alcohol Consumption

In 1996, Applicant drank six to eight beers over a three-hour period, and then he drove his vehicle. (Tr. 38-39) He was arrested for and convicted of driving with an excessive blood alcohol content (BAC).¹ (Tr. 35-37) He refused the police offer that he

¹Applicant's SOR does not allege the following offenses: (1) in 1996, Applicant was convicted of driving with an excessive blood alcohol content; (2) in February 2010, Applicant was convicted of driving with a suspended or revoked driver's license; and in March 2016, Applicant was in a vehicle accident, and he violated his limited driver's permit. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

- (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of

take a test to determine his BAC. (Tr. 36, 38) He was required to attend an Alcoholics Anonymous (AA) meeting. (Tr. 37)

In September 1998, Applicant consumed eight or nine drinks, and then he drove a boat. (Tr. 40) The police stopped him, and he refused a BAC test. (Tr. 41) He was arrested and charged with operating a vessel while intoxicated. (SOR ¶ 1.a response) He was convicted and received two years of suspended imposition of sentence or probation. (Tr. 41)

In March 2007, Applicant drank “too much” alcohol, and then he drove his vehicle. (Tr. 43) The police arrested Applicant for driving while intoxicated by alcohol (DWI). (Tr. 43; SOR ¶ 1.b response) Applicant said he was unemployed from March 2007 to November 2008. (Tr. 23) He was going through a divorce in 2007, and he was depressed. (Tr. 23) In December 2007, Applicant pleaded guilty to DWI, and he received two years of probation and a \$300 fine. (Tr. 43; AE A) Applicant completed a 40-hour alcohol-counseling course, and he successfully completed probation. (Tr. 24, 52; AE A)

In November 2008, Applicant consumed an excessive amount of alcohol; he was intoxicated; and then he drove his vehicle. (Tr. 47-48, 60) The police arrested him for driving while his license was suspended or revoked and for DWI. (Tr. 45-48, 50; SOR ¶ 1.c allegation; GE 2; AE B) In August 2008, he was convicted of DWI, and he received two years of probation. (GE 3 at 5) He was prohibited from drinking alcohol while on probation. (Tr. 45) His license was revoked for 10 years. (Tr. 49, 51) He also received a \$250 fine, community service, and alcohol-related counseling. In 2014, he received a restricted driver’s license. (Tr. 51-52) He did not attend any non-court-ordered AA meetings. (Tr. 52)

SOR ¶ 1.d alleges that Applicant was charged with DWI in December 2008. In his SOR response, Applicant admitted this offense. The Federal Bureau of Investigation (FBI) record indicates in December 2008, Applicant was arrested in connection with a DWI; however, there is no offense date listed or disposition information. (GE 3 at 5-6) Applicant denied that he was arrested for DWI in December 2008. (Tr. 24-25, 49) The Office of Personnel Management (OPM) report of investigation (ROI) reiterates that Applicant was arrested in December 2008 for DWI; however, the only cited basis was the FBI record. (GE 4) The OPM indicated the FBI report did not include any disposition information. (GE 4) There are no court records indicating disposition of the December 2008 DWI. Applicant refuted the allegation that he was arrested for DWI in December 2008.

In 2009, the police arrested Applicant for driving with a suspended or revoked driver’s license, and in February 2010, Applicant was convicted of driving with a suspended or revoked driver’s license. (Tr. 53-54; GE 4 at 4) He received a fine. (Tr. 55)

the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

Id. (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). Applicant’s non-SOR conduct will not be considered for disqualification purposes, and consideration will be limited to the five circumstances outlined by the Appeal Board.

Because he did not have a driver's license, he was not required to have an interlock device on his vehicle. (Tr. 55)

In May 2014, Applicant was charged with unauthorized introduction of alcoholic beverages on Department of Veterans Affairs (VA) property. (SOR ¶ 1.e response) Applicant had an interlock device on his vehicle. He had an open container of alcohol in his vehicle that was not in the trunk. (Tr. 26, 55; GE 4) He did not put the bottle in the trunk because his vehicle was a hatch back. (Tr. 56) Applicant paid a \$525 fine. (Tr. 27)

In March 2016, Applicant was in a vehicle accident, and he received two points which was for violating his limited driver's permit. (Tr. 51) He struck the back of another vehicle, and he received a ticket for following too closely. (Tr. 61)

Applicant said he has reduced his alcohol consumption to a drink or two. (Tr. 27) He does not consume alcohol during the work week. (Tr. 28) He has alcohol in his home. (Tr. 58) Around November 2016, he drank five or six drinks while cooking. (Tr. 59) He takes his employment very seriously, and he is dedicated to his work. (Tr. 27-29) He currently has an interlock device on his vehicle and a restricted driver's license. (Tr. 56, 61) When he is on temporary duty (TDY), he drives to his hotel from the airport even though that vehicle use is not specifically listed on his driving permit. (Tr. 61-62) When he uses a rental car while TDY, he is operating a vehicle without an interlock device. (Tr. 62) He has never received a diagnosis of alcohol abuse or dependence. (Tr. 62)

Financial Considerations

In 2014, Applicant had an account for \$1,456 placed for collection. (SOR ¶ 3.a response; GE 6 at 4) He believes he paid this debt. (Tr. 64) He did not provide corroborating documentation that he paid this debt.

In 2009, Applicant had an account for \$2,632 placed for collection. (SOR ¶ 3.b response) This is a timeshare resort debt; he said he paid \$100 to \$120 monthly for three to four years; and he "paid off the initial \$4,000 for it." (Tr. 30, 65) He informed the resort that he was "cutting ties" with the resort. (Tr. 66) He said the resort added \$2,600 in maintenance fees. (Tr. 31) Applicant has never used the resort. (Tr. 31) He did not want the resort membership, and the debt has dropped off of his credit report. (Tr. 31, 66) He has not made any payments since about 2010. (Tr. 65)

In 2013, Applicant had an account for \$2,158 placed for collection. (SOR ¶ 3.c response; GE 6 at 9) Applicant disputes his responsibility for this debt. Applicant received a continuous positive airway pressure (CPAP) machine for treating his sleep apnea while he had medical insurance. (Tr. 31) When he lost his employment and medical insurance, he attempted to return the CPAP machine to the CPAP company. (Tr. 31, 67) However, the CPAP company never retrieved their CPAP machine. (Tr. 31, 67) Applicant continues to be willing to return the CPAP machine to the CPAP company. (Tr. 31) He is not using the CPAP machine. (Tr. 67)

The three 2016 credit reports of record do not show any of the three delinquent debts alleged in the SOR. (GE 5; AE C; AE E) Applicant has good credit scores (all above 725). (AE C; AE E) His credit reports list numerous positive entries showing accounts are current or paid. Applicant's annual income is \$52,000. (Tr. 63) He assures he intends to pay his debts, and he understands the financial conduct required to retain his security clearance. He does not have a written budget. (Tr. 64) He has not had financial counseling. (Tr. 64) He has excellent performance evaluations. (AE F-AE H) Applicant's supervisor described Applicant as detail oriented, respected by his customers, and proactive to minimize the adverse impact of issues. (AE I)

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. Thus, nothing 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 his or 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

Alcohol Consumption

AG ¶ 21 articulates the Government’s concern about alcohol consumption, “[e]xcessive 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.”

Three alcohol consumption disqualifying conditions could raise a security concern and may be disqualifying in this case. AG ¶¶ 22(a) through 22(c) 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; and
- (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.

AG ¶¶ 22(d) through 22(g) do not apply. There was no evidence of: alcohol impairment or intoxication at work; an alcohol abuse, alcohol dependence, or alcohol use disorder diagnosis; and failure to follow any court orders concerning alcohol use.

AG ¶¶ 22(a), 22(b), and 22(c) apply. Applicant committed DWIs in March 2007 and November 2008. In 1998, he operated a boat while intoxicated, and in May 2014, he had an open container of alcohol in his vehicle while he was at work at a VA property. He engaged in binge alcohol consumption to the extent of impaired judgment.²

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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in

²The term "binge" drinking is not defined in the Adjudicative Guidelines. "Binge drinking is the most common pattern of excessive alcohol use in the United States. See the Center for Disease Control website, (stating "The National Institute on Alcohol Abuse and Alcoholism defines binge drinking as a pattern of drinking that brings a person's blood alcohol concentration (BAC) to 0.08 grams percent or above. This typically happens when men consume 5 or more drinks, and when women consume 4 or more drinks, in about 2 hours."), <https://www.cdc.gov/alcohol/fact-sheets/binge-drinking.htm>.

Egan, supra. “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶ 23(b) applies. There is no evidence of irresponsible alcohol consumption after Applicant’s DWI arrest in November 2008. His possession of an open container of alcohol at work in 2014 in his vehicle does not establish irresponsible alcohol consumption.

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).

I have carefully considered the Appeal Board’s jurisprudence on alcohol consumption and Applicant’s history of alcohol consumption. He has a sustained period of responsible alcohol consumption. He has not had any alcohol *consumption* related incidents involving the police, courts, or at his employment since November 2008. Applicant has eliminated doubts about his current reliability, trustworthiness, and good judgment in relation to his alcohol consumption. Alcohol consumption security concerns are mitigated.

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 describes two conditions that could raise a security concern and may be disqualifying in this case: “(a) a single serious crime or multiple lesser offenses;” and “(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.”

AG ¶¶ 31(a) and 31(c) apply. The SOR alleges and the record establishes Applicant committed four misdemeanor-level offenses: (1) in 1998, he operated a boat while intoxicated; (2) in March 2007, DWI; (3) in November 2008, DWI; and (4) in May 2014, unauthorized introduction of alcoholic beverages on VA property.

AG ¶ 32 provides four conditions that could potentially mitigate security concerns:

- (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 person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) evidence that the person did not commit the offense; and
- (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Although none of the mitigating conditions fully apply, there are important mitigating factors. Applicant has reduced his alcohol consumption, and he does not drive after consuming alcohol. He has an excellent employment record. He expressed regret and remorse concerning his offenses.

Applicant admitted the four criminal offenses in the SOR. He committed two additional criminal offenses. In 1996, Applicant was convicted of driving with an excessive BAC. In February 2010, Applicant was convicted of driving with a suspended or revoked driver's license. Applicant is not in full compliance with the conditions of his restricted driver's license. When he is TDY, he does not install an interlock device on his rental vehicle, and he drives a rental vehicle from the airport to his hotel (not to and from his home to work). Although he is not on probation, restrictions on his driver's license will continue until 2018. More time must elapse without violations of his license restrictions and without criminal activity before there is enough assurance that criminal conduct security concerns are unlikely to recur. Applicant is not ready to be entrusted with access to classified information at this time.

Financial Considerations

AG ¶ 18 articulates the security concern for 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.

The Appeal Board explained the scope and rationale for the financial considerations security concern as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted).

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 credit reports, SOR response, and hearing record. 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;³ and

³The 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].

(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 SOR indicates he has three delinquent debts in collections for \$1,456, \$2,632, and \$2,158. He paid the first debt. For the \$2,632 debt, he terminated the contract for the CPAP and offered to return the CPAP machine. For the \$2,158 debt, he terminated the time-share agreement. The creditors for the \$2,632 and \$2,158 debts have not pursued additional payments from Applicant, and the two debts are not listed on his 2016 credit reports.

Applicant has good credit scores (all above 725). His credit reports show numerous positive entries for accounts showing accounts are current or paid. There is sufficient assurance that his financial problems are being resolved, are under control, and will not recur in the future. AG ¶¶ 20(a) and 20(c) are established. Applicant mitigated financial considerations security concerns.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

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

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

Applicant is a 48-year-old employee of a defense contractor, who has worked as a manager for teams installing wireless communications. In 1990, he received a bachelor's degree in economics with a minor in marketing, and in 1992, he received a

(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)).

master's degree in marketing education. He has excellent performance evaluations from his employer. His supervisor described Applicant as detail oriented, respected by his customers, and proactive to minimize the adverse impact of issues. There is no evidence of security violations.

Applicant's SOR alleges three debts in collections totaling \$6,246. He paid one debt, and he disputes his responsibility for a time-share vacation debt and a medical debt for a CPAP machine. The three 2016 credit reports of record do not show any of the three delinquent debts alleged in the SOR. Applicant has good credit scores (all above 725). His credit reports show numerous positive entries for accounts showing accounts are current or paid. He assures he intends to pay his debts, and he understands the financial conduct required to retain his security clearance. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

. . . 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 has established a "meaningful track record" of debt repayment, and I am confident he will maintain his financial responsibility.

Applicant has not been diagnosed with alcohol abuse, alcohol dependence, or alcohol use disorder. He has reduced his alcohol consumption. He has not had an incident involving the police or the courts and excessive alcohol consumption since November 2008. He does not drive after drinking alcohol. His current alcohol consumption is responsible.

The factors weighing against continuation of his security clearance are more substantial than the mitigating circumstances. From 1996 to May 2014, Applicant committed six misdemeanor-level criminal offenses. In addition to the six offenses, in March 2016, Applicant was in a vehicle accident, and he violated his limited driver's permit. When on TDY, he uses a rental car to go to his hotel, and he does not use an alcohol-interlock device on his rental car. His driver's license will be restricted until 2018.

It is well settled that once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). Unmitigated criminal conduct security concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With a track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Alcohol consumption and financial considerations security concerns are mitigated; however, criminal conduct security concerns are not mitigated. It is not clearly consistent with the national interest to grant or reinstate Applicant's security clearance eligibility at this time.

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 J: **AGAINST APPLICANT**

Subparagraphs 1.a through 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant

Paragraph 2, Guideline G: FOR APPLICANT

Subparagraphs 2.a and 2.b: For Applicant

Paragraph 3, Guideline F: **FOR APPLICANT**

Subparagraphs 3.a through 3.c: For 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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Mark W. Harvey
Administrative Judge