



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



In the matter of:

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ISCR Case No. 15-07651

Applicant for Security Clearance

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel

For Applicant: *Pro se*

07/18/2017

Decision

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) alleges 27 delinquent debts totaling \$49,787. He mitigated two debts totaling \$1,494. He did not provide sufficient evidence of resolution of financial issues or inability to make greater progress. Financial considerations security concerns are not mitigated. His alcohol-related criminal offenses and alcohol consumption security concerns are mitigated because the offenses are not recent. Eligibility for access to classified information is denied.

Statement of the Case

On March 6, 2015, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE 1)) On June 6, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, which became effective on September 1, 2006 (Sept. 1, 2006 AGs).

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security 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. Specifically, the SOR set forth security concerns arising under the criminal conduct, alcohol consumption, and financial considerations guidelines.

On August 23, 2016, Applicant responded to the SOR, and he requested a hearing. On October 31, 2016, Department Counsel was prepared to proceed. On January 10, 2017, the case was assigned to me. On February 27, 2017, the Defense Office of Hearings and Appeals issued a notice setting the hearing for March 15, 2017. The hearing was held as scheduled. Applicant waived his right to 15 days of notice of the date, time, and location of his hearing. (Transcript (Tr.) 12-13) Department Counsel offered nine exhibits into evidence; Applicant offered four exhibits into evidence; and all exhibits were admitted without objection. (Tr. 15-18; GE 1-3; Applicant Exhibit (AE) A-D) On March 23, 2017, DOHA received a transcript of the hearing. The record was held open until May 15, 2017, for Applicant to provide additional evidence. (Tr. 68, 72) No post-hearing documents were received.

While this case was pending a decision, the Director of National Intelligence issued Security Executive Agent Directive 4, establishing 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.¹

Findings of Fact²

In Applicant’s SOR response, he admitted the SOR allegations in ¶¶ 1.a through 1.c and 3.a, 3.b, 3.c, 3.h, 3.i, 3.j, 3.l, 3.m, 3.n, 3.p, 3.q, and 3.t through 3.aa. He also provided extenuating and mitigating information. Applicant’s admissions are accepted as findings of fact. Additional findings of fact follow.

Applicant is 41-year-old logistics engineer and system analyst who has been working for defense contractors since 2009. (Tr. 5, 7) He held a security clearance in the 1990s and from 2005 to present. (Tr. 21) There is no evidence of security violations. In 1993, he graduated from high school. (Tr. 5) He attended college for four years; however, he did not receive a degree. (Tr. 5) He has not served in the military. (Tr. 6) He has been common-law married for three years, and his son is six weeks old. (Tr. 6-7) His employer has not taken any disciplinary actions against him. (Tr. 72)

¹Application 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.

²Some details were excluded to protect Applicant’s right to privacy. Specific information is available in the cited exhibits.

Financial Considerations

Applicant attributed his financial problems to medical expenses from his surgeries from 2002 to 2010 because at times he did not have medical insurance and to nine months of unemployment in 2009. (Tr. 40-42) From March to November 2016, he paid a credit-repair company \$100 monthly to dispute the debts on his credit report. (Tr. 40-45; AE C) The credit repair company was successful in getting most of the negative entries removed from his credit report. (Tr. 41) Some of the debts removed were old or duplications. (Tr. 44) Applicant said he was the victim of identity theft around 2006 or 2007. (Tr. 46-47) He filed a police report. (Tr. 46) Several negative SOR entries relate to charged-off debts, and Applicant was advised that he did not need to resolve the debts because “. . . it’s not going to matter. At this point, it’s going to reflect as a charge-off regardless, and they’re not going to go back and change it and say that I paid it.” (Tr. 55)

Applicant’s March 24, 2015 and April 21, 2016 credit reports and SOR list 26 delinquent debts totaling \$49,787 as follows:³

SOR ¶¶ 3.a and 3.b allege two student loans placed for collection for \$15,416 and \$14,704. (GE 9 at 5) Applicant said he only had one student loan, and that debt was current. (Tr. 48-49) He said he has been making \$200 monthly payments for about two years; however, he has not made payments for about three months because he lost his debit card. (Tr. 50-51) He did not present any student loan documentation.

SOR ¶¶ 3.c, 3.e, and 3.k allege delinquent bank debts for \$512, \$982, and \$912. For SOR ¶ 3.c, Applicant’s vehicle was repossessed four or five years ago; he paid the debt; and the vehicle was returned to him. (Tr. 52-55) He said SOR ¶ 3.e is that same debt as SOR ¶ 3.c. (Tr. 55) He currently has accounts with the same creditor as listed in SOR ¶¶ 3.c and 3.e. (Tr. 55-56)

SOR ¶ 3.d alleges a delinquent utility debt for \$119. Applicant did not know why this debt was on credit report. (Tr. 53-54)

SOR ¶¶ 3.f, 3.g, 3.h, 3.i, 3.j, 3.l, 3.m, 3.n, 3.p, 3.q, 3.t, 3.u, 3.v, 3.w, 3.x, 3.y, 3.z, and 3.aa allege 18 delinquent medical debts for \$8,090, \$2,439, \$1,404, \$1,179, \$1,044, \$568, \$405, \$301, \$250, \$225, \$194, \$178, \$36, \$36, \$31, \$30, \$29, and \$28. He has not paid or resolved any of the medical debts on his SOR. (Tr. 57) He found the medical debts to be overwhelming. (Tr. 57) The week before his hearing, he received a medical bill associated with the birth of his son for \$62,000. (Tr. 57) He has submitted the \$62,000 bill to his insurance company. (Tr. 57) He receives 10 or 11 medical bills each month. (Tr. 57)

SOR ¶¶ 3.o, 3.r, and 3.s allege delinquent telecommunications debts for \$257, \$218, and \$200. He did not present any information about these three debts.

³For purposes of the financial considerations portion of this decision, only the SOR-alleged debts are considered for disqualification purposes.

Applicant's tax returns are now timely filed; however, his 2008 tax return was filed in 2010. (Tr. 59) Applicant annual gross income is about \$100,000. (Tr. 60) He has about \$35,000 in his 401(k) account. (Tr. 61) He began using a budget in January 2017. (Tr. 64) At his hearing, he provided updated information about payments and resolution of some non-SOR traffic offenses. (AE A; AE B) He did not provide any receipts for payments addressing any of the SOR debts. (Tr. 66-67) He said he could provide proof of some payments from his bank account, and I gave him until May 15, 2017, to provide proof of payments. (Tr. 68, 72) He did not provide any post-hearing documents.

Criminal Conduct and Alcohol Consumption

On August 19, 2006, July 26, 2007, and April 13, 2008, Applicant was charged with public intoxication. (SOR ¶¶1.a-1.c) Applicant did not remember specifics about the public intoxication arrests; however, it was probably for getting into fights or being near fights at bars. (Tr. 20-21) When there was an altercation in a bar, the police arrested or cited the people in the vicinity for public intoxication. He paid the fines for the public intoxication convictions. (Tr. 23)

On June 17, 2012, he was charged with public intoxication. (Tr. 24; SOR ¶ 1.d) Applicant had been drinking alcohol; his vehicle was stopped by the police; he had open warrants for unpaid tickets; and he was taken to jail. (Tr. 25-27)

On September 26, 2013, he was charged with driving while intoxicated by alcohol (DWI). (Tr. 28; SOR ¶ 1.e) Applicant ran a stop sign; he argued with the arresting officer; he told the police officer he had a beer or two to drink with dinner; and he was arrested for DWI. (Tr. 28-29) He did not take any blood alcohol or breathalyzer tests. His current employer told him he needed to resolve the charge in order to be hired, and he decided to plead guilty to DWI in order to obtain employment. (Tr. 29-30, 65) He received nine months of probation and a fine. (Tr. 31) In May 2016, he completed his probation. (Tr. 32) He was not required to attend any alcohol-related classes or counseling. (Tr. 32) He has not had a professional assessment or diagnosis of his alcohol consumption under DSM-V.⁴ (Tr. 35) He completed all court requirements for his DWI. (Tr. 39-40)

Applicant consumes alcohol about once a week. (Tr. 32) He drinks three or four beers at a sitting. (Tr. 70) The last time he drank to intoxication was two years ago. (Tr. 32, 71) He does not drive after drinking alcohol. (Tr. 33)

⁴The criteria for "alcohol abuse" is drawn from the 5th edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5). The criteria in DSM-5 for alcohol use disorder (AUD) are objective, well established, and rely primarily on self-reports and descriptions. DSM-5 separates AUD into mild, moderate, and severe sub-classifications. DSM-5 is used throughout the medical and legal communities. The DSM-5 notes that, "early remission from a DSM-5 substance use disorder is defined as at least 3 but less than 12 months without substance use disorder criteria (except craving), and sustained remission is defined as at least 12 months without criteria (except craving)." The new DSM-5 includes "in a controlled environment" and "on maintenance therapy" as the situation warrants. The alcohol consumption guideline does not incorporate DSM remission criteria and leaves mitigation to a case-by-case determination.

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 in this decision should be construed to suggest that it is based, 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 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 for financial problems:

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

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) 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.

AG ¶ 19 includes three disqualifying conditions that could raise a security concern and 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.”

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 history of delinquent debt is documented in his credit reports, SOR response, and hearing. The record establishes the disqualifying conditions in AG ¶¶ 19(a), 19(b), and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable in this case:

- (a) the behavior happened so long ago,⁵ 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 individual has received or is receiving financial 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;⁶ 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

⁵A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. February 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sep. 13, 2016)).

⁶The 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)).

proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

The DOHA 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 *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).

None of the mitigating conditions fully apply; however, Applicant disclosed some circumstances beyond his control which adversely affected his finances. Applicant attributed his financial problems to nine months of unemployment in 2009 and medical expenses from his surgeries from 2002 to 2010 because at times he did not have medical insurance. SOR ¶¶ 3.c and 3.e allege delinquent bank debts for \$512 and \$982. Applicant's vehicle was repossessed four or five years ago; he paid the debt; and the vehicle was returned to him. I surmise from the magnitude and origin of the negative credit report information that Applicant was behind on several payments on his vehicle and then he made up the payments. SOR ¶ 3.e is that same debt as SOR ¶ 3.c. He currently has accounts with the same creditor as listed in SOR ¶¶ 3.c and 3.e. Applicant is credited with mitigating the debts in SOR ¶¶ 3.c and 3.e.

Applicant utilized the services of a credit repair company to challenge negative information on his credit reports. "[T]hat some debts have dropped off his credit report is not meaningful evidence of debt resolution." ISCR Case No. 14-05803 at 3 (App. Bd. July 7, 2016) (citing ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015)). The Fair Credit Reporting Act requires removal of most negative financial items from a credit report seven years from the first date of delinquency or the debt becoming collection barred because of a state statute of limitations, whichever is longer.⁷ Debts may be dropped from a credit report upon dispute when creditors believe the debt is not going to be paid, when the debt has been charged off, when the creditor fails to timely authenticate the debt, or for other reasons unrelated to whether the debt is legitimate or has been paid.

⁷Title 15 U.S.C. § 1681c. See Federal Trade Commission website, Summary of Fair Credit Reporting Act Updates at Section 605, <https://www.consumer.ftc.gov/articles/pdf-0111-fair-credit-reporting-act.pdf>.

All states have statutes of limitations upon collectability of credit card debts, which range from three to six years. The South Carolina Court of Appeals succinctly explained the societal and judicial value of application of the statute of limitations:

Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence and promote repose by giving security and stability to human affairs. The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation. Significantly, statutes of limitations provide potential defendants with certainty that after a set period of time, they will not be ha[iled] into court to defend time-barred claims. Moreover, limitations periods discourage plaintiffs from sitting on their rights. Statutes of limitations are, indeed, fundamental to our judicial system.

Carolina Marine Handling, Inc. v. Lasch, 363 S.C. 169, 175-76, 609 S.E.2d 548, 552 (S.C. Ct. App. 2005) (internal quotation marks and citations omitted). As a general statement, under the Appeal Board's jurisprudence, debts that are beyond the statute of limitations for collections cannot be mitigated solely because they are not collectable.⁸

Recently, the DOHA Appeal Board reinforced its position on statutes of limitations not mitigating financial considerations concerns stating:

In this case, the Judge noted that Applicant explained that he did not owe any of the alleged debts because they had either been deleted from his credit report or soon would be deleted, and he also relied on a state statute of limitations to absolve himself of debts. The Appeal Board has long recognized that debts remain relevant for security clearance purposes even if they are no longer enforceable due to the running of the statute of limitations or cannot be legally listed on a credit report due to the passage of time. See e.g., ISCR Case No. 03-04779 at 4 (App. Bd. Jul. 20, 2005) and ISCR Case No. 03-20327 at 6 (App. Bd. Oct 26, 2006).⁹ We also have

⁸The statute of limitations clearly and unequivocally ends an Applicant's legal responsibility to pay the creditor after the passage of a certain amount of time, as specified in state law. In a series of decisions the Appeal Board has rejected the statute of limitations for debts generated through contracts, which is the law in all 50 states, as automatically mitigating financial considerations concerns under AG ¶ 20(d). See ISCR Case No. 08-01122 at 4 (App. Bd. Feb. 9, 2009); ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008); ADP Case No. 07-13041 at 5 (App. Bd. Sep. 19, 2008); ISCR Case No. 07-11814 at 2 (App. Bd. Dec. 29, 2008) ADP Case No. 06-14616 at 3 (App. Bd. Oct. 18, 2007) (stating, "reliance upon legal defenses such as the statute of limitations does not necessarily demonstrate prudence, honesty, and reliability; therefore, such reliance is of diminished probative value in resolving trustworthiness concerns arising out of financial problems. See, e.g., ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)."). This opinion does not assert that the statute of limitations provides any mitigation under Guideline F; however, this aspect of Applicant's financial situation is a circumstance which may explain Applicant's failure to take more timely and aggressive actions to resolve his delinquent debts. The Appeal Board has not defined how long after the statute of limitations expires an Applicant must wait before receiving a fresh start similar to that received when debts are discharged under Chapter 7 of the Bankruptcy Code.

⁹Compare ISCR Case No. 12-04806 (App. Bd. Jul. 3, 2014) (holding anti-deficiency act barred collection of first mortgage debt and the debt was mitigated). In that case, Applicant corroborated efforts to

held that reliance on a state's statute of limitations does not constitute a good-faith effort to resolve financial difficulties and is of limited mitigative value. ADP Case No. 06-18900 at 5 (App. Bd. Jun. 6, 2008) (citing ISCR Case No. 03-04779 at 4 (App. Bd. Jul. 20, 2005) and ISCR Case No. 01-09691 at 2-3 (App. Bd. Mar. 27, 2003)).

ISCR Case No. 15-01208 at 3 (App. Bd. Aug. 26, 2016).

Applicant's state of residence has a four-year statute of limitations.¹⁰ Debts are not legally collectible after four years have elapsed with no payments; however, those debts, even the ones removed from his credit report due to being stale, remain unresolved for security clearance purposes.¹¹

Applicant did not provide enough details about what he did to address his SOR debts over the last four years. Aside from resolution of the debts in SOR ¶¶ 3.c and 3.e several years ago, he did not provide sufficient documentation relating to the other SOR debts: (1) proof of payments, such as checking account statements, photocopies of checks, or a letter from the creditor proving that he paid or made any payments to the creditors; (2) correspondence to or from the creditors to establish maintenance of contact;¹² (3) credible debt disputes indicating he did not believe he was responsible for the debts and why he held such a belief; (4) more evidence of attempts to negotiate payment plans, such as settlement offers or agreements to show that he was attempting to resolve these debts; or (5) other evidence of progress or resolution. Applicant failed to

settle a charged-off second mortgage debt. Also, that Applicant had received financial counseling. Ultimately, the Board affirmed the Judge's favorable decision.

¹⁰ See Tex. Civ. Prac. & Rem. Code §§ 16.004(c) and 16.051 (statute of limitations for contracts); 16.004(a)(3) (statute of limitations for debts); *Cont'l Casualty Co. v. Dr. Pepper Bottling Co. of Tex.*, 416 F.Supp. 2d 497, 505-507 (W.D. Tex. 2006); *Facility Ins. Corp. v. Employers Ins. of Wausau*, 357 F.3d 508, 513-514 (5th Cir. 2004) (discussing statute of limitations for open or revolving accounts). Debts barred by the Texas statute of limitations are legally uncollectible. However, payments on his debts could have reinstated them, ending the statute of limitations defense to collection. See *Stine v. Stewart*, 80 S.W.3d 586, 591, 45 Tex. Sup.J. 966 (Tex. 2002). The reduction in the magnitude and number of debts that creditors can legally enforce because of the application of the Texas statute of limitations reduces the potential vulnerability to improper financial inducements, and the degree that a debtor is "financially overextended," is also reduced. However, it does not negate the debtor's past conduct in which he or she failed to take more aggressive actions to resolve his delinquent debts.

¹¹The Appeal Board has indicated that promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sept. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)).

¹²"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.

establish mitigation under AG ¶ 20(e) because he did not provide documented proof to substantiate the existence, basis, or the result of any debt disputes.

There is insufficient evidence about why Applicant was unable to make greater progress resolving his SOR debts. There is insufficient assurance that his financial problems are being resolved, are under control, and will not recur in the future. Under all the circumstances, he failed to establish that financial considerations security concerns are mitigated.

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 alcohol¹³ to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder.

An Administrative "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).

¹³Although 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. 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>.

AG ¶¶ 22(a) and 22(c) apply. Applicant had 5 alcohol-related incidents involving the police and courts in the last 11 years. His DWI conviction established that he engaged in binge-alcohol consumption to the extent of impaired judgment.¹⁴

AG ¶ 23 details conditions that could mitigate security concerns including:

(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 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.

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 (2 years); he does not drive after consuming alcohol; he expressed his remorse about his immature conduct; he has a good record of employment; and he successfully completed his probation after his DWI in 2013. Balanced against this positive information are Applicant's 5 alcohol-related incidents involving the police and courts in the past 11 years, and his binge-alcohol consumption to the extent of a DWI in 2013. AG ¶ 23(a) applies. Sufficient time has elapsed without an

¹⁴ "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>).

alcohol-related incident or binge-alcohol consumption to resolve my doubts about Applicant's current reliability, trustworthiness, and good judgment. 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 lists two conditions that could raise a security concern and may be disqualifying 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 Applicant committed 5 misdemeanor-level criminal offenses involving alcohol and the courts in the last 11 years.

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.

For the reasons indicated in the previous section, AG ¶ 32(a) applies. More than three years have elapsed without violations of criminal laws, and criminal conduct is unlikely to recur. Criminal conduct security concerns are 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 the 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), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guidelines F, J, and G are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is 41-year-old logistics engineer and system analyst who has been working for defense contractors since 2009. He held a security clearance in the 1990s and from 2005 to present, and there is no evidence of security violations. He attended college for four years. His employer has not taken any disciplinary actions against him.

Applicant attributed his financial problems to nine months of unemployment in 2009 and medical expenses from his surgeries from 2002 to 2010 because at times he did not have medical insurance. From March to November 2016, he paid a credit-repair company \$100 monthly to dispute the debts on his credit report. Applicant was the victim of identity theft around 2006 or 2007. Several negative SOR entries relate to charged-off debts, and Applicant was advised that he did not need to resolve the debts because ". . . it's not going to matter. At this point, it's going to reflect as a charge-off regardless, and they're not going to go back and change it and say that I paid it." (Tr. 55)

Applicant committed 5 misdemeanor-level criminal offenses involving alcohol abuse in the past 11 years. His most recent offense occurred on September 26, 2013. His most recent binge-alcohol consumption was two years ago. His excessive alcohol consumption is in remission, and his criminal conduct involving alcohol is not recent.

Applicant's SOR alleges 27 delinquent debts totaling \$49,787. He mitigated two debts totaling \$1,494. He provided insufficient corroborating or substantiating

documentary evidence of payments and established payment plans for his other SOR debts. His actions show lack of financial responsibility and judgment and raise unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18. More information about inability to pay debts, financial history, or documented financial progress is necessary to mitigate security concerns.

Applicant provided insufficient corroborating or substantiating documentary evidence of payments and established payment plans for his SOR debts. He did not provide a detailed plan about how he intended to resolve all of his delinquent SOR debts. His actions show lack of financial responsibility and judgment and raise unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18. More documented information about inability to pay debts, financial history, or documented financial progress is necessary to mitigate security concerns.

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*, 913 F. 2d at 1401. Unmitigated financial considerations 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 more effort towards documented resolution of his past-due debts, and 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. I conclude that alcohol consumption and criminal conduct security concerns are mitigated; however, financial consideration security concerns are not mitigated. It is not clearly consistent with the interests of national security to grant Applicant 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:	FOR APPLICANT
Subparagraphs 1.a through 1.e:	For Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f through 1.aa:	Against Applicant

Conclusion

In light of all of the circumstances in this case, it is not clearly consistent with the interests of national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

MARK HARVEY
Administrative Judge