



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-01585

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

01/24/2018

Decision

HARVEY, Mark, Administrative Judge:

Applicant provided insufficient evidence that he was unable to make greater progress resolving the delinquent debts and filing overdue tax returns on the statement of reasons (SOR). He had four arrests for driving under the influence of alcohol (DUI) from 2006 to 2015. Security concerns under Guidelines F (financial considerations), G (alcohol consumption), and J (criminal conduct) are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On June 28, 2016, Applicant signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). Government Exhibit (GE) 1. On May 30, 2017, 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*, effective on September 1, 2006. Hearing Exhibit (HE) 2. The SOR set forth security concerns arising under Guidelines F, G, and J. HE 2.

On June 20, 2017, Applicant provided a response to the SOR, and he requested a hearing. HE 3. On August 23, 2017, Department Counsel was ready to proceed. On

August 28, 2017, the case was assigned to me. On November 8, 2017, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for December 1, 2017. HE 1.¹ Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered seven exhibits; Applicant did not offer any exhibits; there were no objections; and all proffered exhibits were admitted into evidence. Transcript (Tr.) 14, 18-20; GE 1-7. On December 20, 2017, DOHA received a copy of the hearing transcript.

The Director of National Intelligence (DNI) 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 eligibility for access to classified information or eligibility to hold a sensitive position on or after June 8, 2017. The new AGs supersede the previous AGs, and I have evaluated Applicant's security clearance eligibility under the new AGs.²

Findings of Fact³

In Applicant's SOR response, he admitted conduct alleged in SOR ¶¶ 1.a, 1.c, 1.g, 1.h, 2.a, 2.b, 2.c, and 2.d. HE 2. He also provided mitigating information. HE 2.

Applicant is a 34-year-old employee of a government contractor who has worked as an aerospace avionics and electrical technician since July 2014. Tr. 5-6; GE 1. In 2001, Applicant graduated from high school. Tr. 6. He served on active duty in the Air Force from March 2004 to May 2013, and his specialty was avionics. Tr. 7-8. When he left the Air Force, he was a staff sergeant (E-5). Tr. 8. He is receiving 20 percent disability from the Department of Veterans Affairs (VA). Tr. 7. In 2009, he received an associate's degree in avionic systems and technology. Tr. 6. Applicant married in 2006, separated from his spouse in 2009, and was divorced in 2017. Tr. 22. His children are ages 2, 9, and 12. Tr. 9. He held a security clearance for nine years while serving in the Air Force, and there is no evidence of security violations. Tr. 17.

Financial Considerations

Applicant was unemployed from May 2013 to July 2014. Tr. 7. His current annual salary is \$46,000. Tr. 21. He does not have a written budget. Tr. 22. He has not received financial counseling. Tr. 22. His youngest child resides with Applicant, and Applicant does

¹ Applicant was unable to attend the first scheduled hearing on October 31, 2017, because the video teleconference room at his location was unavailable to him. Applicant was not responsible for not attending the first hearing.

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/SEAD4_20170608.pdf.

³ Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

not pay child support for her. Tr. 22. Applicant's child support situation is unclear because two different states are handling child support and their records show inconsistencies between the amount of support required from the two states. Tr. 10, 23-25.

The SOR alleges six delinquent debts totaling \$11,125, and the record establishes the status of Applicant's accounts as follows:

SOR ¶ 1.a alleges a charged-off debt for \$7,645. In 2013, Applicant was unemployed and unable to make his vehicle payments. Tr. 26. The creditor repossessed his vehicle. Tr. 26. He has not been in contact with the creditor in a "long time." Tr. 27.

SOR ¶ 1.b alleges a debt placed for collection for \$795. Applicant said the charge was for cable equipment after the contract with the creditor ended. Tr. 27. Applicant turned in the cable equipment; however, he did not receive credit for returning the equipment. Tr. 27. He has not made a written dispute of the debt or taken other action to resolve the debt. Tr. 28.

SOR ¶ 1.c alleges a state tax lien filed by State X in 2016 for \$2,090. Applicant said his residence for tax purposes while he was in the Air Force was a state without state income taxes, and he disputed his responsibility for the State X tax debt, which was for tax year 2013. Tr. 28. After he left the Air Force, he moved to State X. His pay was being garnished for the tax debt; however, the garnishment was stopped when his child support garnishment occurred. Tr. 28-29. He has not made any payments to address this debt. Tr. 29.

SOR ¶ 1.d alleges a telecommunications debt placed for collection for \$569. Applicant was unsure about the origin or status of this debt. Tr. 29. He did not investigate the debt after receiving the SOR. Tr. 29.

SOR ¶¶ 1.e and 1.f allege two medical debts placed for collection for \$15 and \$11. He did not investigate or do anything about the two medical debts after receiving the SOR. Tr. 30.

SOR ¶¶ 1.g and 1.h allege Applicant failed to file his federal and state tax returns for tax years 2013 and 2015. Applicant filed his federal income tax returns for tax year 2013; however, he withdrew funds from his Thrift Savings Plan (TSP) account. Tr. 33. He failed to include the funds from his TSP account in his income. Tr. 33. He did not file his state tax return for tax year 2013. Tr. 33. He owes the IRS about \$3,000 for tax year 2013. Tr. 34. He is not making payments on his IRS debt owed for tax year 2013. Tr. 34. He has not filed his federal and state tax returns for tax years 2015 and 2016. Tr. 35.

Applicant has a new credit card debt on his credit report for \$6,787 placed for collection. Tr. 30. He believed this debt was being addressed through a garnishment of his pay. Tr. 30-32.

Alcohol Consumption and Criminal Conduct

In 2006, Applicant was arrested for DUI. Tr. 36. His blood-alcohol content (BAC) was .126. Tr. 37. He received a letter of reprimand from his commanding officer. Tr. 36. He was convicted of DUI in a state court and sentenced to pay a \$1,500 fine. GE 4 at 2.

In 2012, Applicant was arrested for DUI. He received nonjudicial punishment (NJP) for the DUI. His BAC was about .06, which was sufficient in the overseas location where the offense occurred to constitute DUI. Tr. 37-39. As a result of the NJP process, he received forfeiture of \$700 pay per month for two months, restriction, extra duty, and a reprimand. GE 6 at 11. He attended alcohol counseling after the 2012 DUI. Tr. 36, 39. He was diagnosed with alcohol abuse. Tr. 40.

In 2013, Applicant was arrested for DUI. Tr. 40. He did not remember his BAC. Tr. 41. He was briefly jailed after the DUI. Tr. 41. He pleaded nolo contendere to DUI. SOR response. After the 2013 DUI, he stopped drinking alcohol for six or seven months, and then he resumed his alcohol consumption. Tr. 44. After he was found guilty, Applicant was working on his vehicle, and he was accused of tampering with the interlock device, or ignition lock for detection of alcohol consumption on his vehicle. Tr. 41. He was jailed for about six months. Tr. 42. He did not indicate whether or not he was convicted of tampering with an interlock device. The SOR does not allege he violated a condition of probation.

In January 2015, Applicant was arrested for DUI. Tr. He did not remember his BAC. Tr. 46. He was found guilty of DUI. SOR response. Applicant completed a defensive driving course, and in 2015, he was diagnosed with alcohol abuse at the VA. Tr. 44. He did not attend any Alcoholics Anonymous (AA) meetings after the 2015 DUI. Tr. 48.

Applicant most recently consumed alcohol the weekend before his hearing. Tr. 48. He consumed a "couple beers and a few shots." Tr. 48. He did not drive after consuming alcohol on that occasion. Tr. 48. He most recently drank sufficient alcohol to feel intoxicated a "month or so" before his hearing. Tr. 48. He consumed beer, and then he drove a "couple of weeks" before his hearing. Tr. 49. Although he consumes more alcohol than he believes he should, he did not concede that he is an "alcoholic or a problematic drinker." Tr. 49. In the future, he intends to drink alcohol responsibly because an additional DUI would be a felony. Tr. 49.

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, Secretary of Defense, and DNI have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the applicant’s personal or professional history that may disqualify the applicant for eligibility 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. Sept. 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

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 four 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"; "(c) a history of not meeting financial obligations"; and "(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required." 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). The record establishes the disqualifying conditions in AG ¶¶ 19(a), 19(b), 19(c), and 19(f) requiring additional inquiry about the possible applicability of mitigating conditions.

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

(a) the behavior happened so long ago,⁴ 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

⁴ A 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)).

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;⁵

(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;

(f) the affluence resulted from a legal source of income; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

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

⁵ The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

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

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

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).

Applicant’s unemployment from May 2013 to July 2014 was partially or fully outside his control and adversely affected his finances. He did not receive financial counseling. However, without more information, he did not establish that he acted prudently, and how circumstances beyond his control adversely affected his finances. Applicant did not prove he acted responsibly under the circumstances because he did not show the changes in his income or the specific needs of family and friends over the last five years, and he did not establish he was unable to make any payments to address any of the SOR debts.

Applicant did not provide documentation relating to his SOR debts such as: (1) proof of payments, for example, checking account statements, photocopies of checks, or a letter from the creditor proving that he paid or made any payments to the creditor; (2) correspondence to or from the creditor to establish maintenance of contact;⁶ (3) copies of credible debt disputes sent to the creditor and/or credit reporting companies indicating he did not believe he was responsible for the debt and why he held such a belief; (4) evidence of attempts to negotiate payment plans, for example, settlement offers or agreements to show that he was attempting to resolve this debt; or (5) other evidence of progress or resolution.

Applicant failed to prove that he filed his state income tax returns for tax years 2013 and 2015 and his federal income tax returns for tax year 2015. A willful failure to timely make (means complete and file with the IRS) a federal income tax return is a misdemeanor-level federal criminal offense.⁷ For purposes of this decision, I am not weighing Applicant’s failure to timely file his federal income tax returns against him as a federal crime. In regard to the failure to timely file federal and state income tax returns, the DOHA Appeal Board has commented:

⁶ “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.

⁷ Title 26 U.S.C. § 7203, willful failure to file return, supply information, or pay tax, reads:

Any person . . . required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to . . . make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor

A willful failure to make return, keep records, or supply information when required, is a misdemeanor without regard to existence of any tax liability. *Spies v. United States*, 317 U.S. 492 (1943); *United States v. Walker*, 479 F.2d 407 (9th Cir. 1973); *United States v. McCabe*, 416 F.2d 957 (7th Cir. 1969); *O’Brien v. United States*, 51 F.2d 193 (7th Cir. 1931).

Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a clearance adjudication is not directed at collecting debts. See, e.g., ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, neither is it directed toward *inducing an applicant to file tax returns*. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. *Id.* A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).

ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016) (emphasis in original). See ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016) (citing ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002)); ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015). The Appeal Board clarified that even in instances where an “[a]pplicant has purportedly corrected [his or her] federal tax problem, and the fact that [applicant] is now motivated to prevent such problems in the future, does not preclude careful consideration of [a]pplicant’s security worthiness in light of [his or her] longstanding prior behavior evidencing irresponsibility” including a failure to timely file federal income tax returns. See ISCR Case No. 15-01031 at 3 and note 3 (App. Bd. June 15, 2016) (characterizing “no harm, no foul” approach to an Applicant’s course of conduct and employing an “all’s well that ends well” analysis as inadequate to support approval of access to classified information with focus on timing of filing of tax returns after receipt of the SOR).

In ISCR Case No. 15-01031 at 2 (App. Bd. June 15, 2016), the Appeal Board reversed the grant of a security clearance, and noted the following primary relevant disqualifying facts:

Applicant filed his 2011 Federal income tax return in December 2013 and received a \$2,074 tax refund. He filed his 2012 Federal tax return in September 2014 and his 2013 Federal tax return in October 2015. He received Federal tax refunds of \$3,664 for 2012 and \$1,013 for 2013.

Notwithstanding the lack of any tax debt owed, the Appeal Board provided the following principal rationale for reversing the grant of a security clearance:

Failure to comply with Federal and/or state tax laws suggests that an applicant has a problem with abiding by well-established Government rules and regulations. Voluntary compliance with rules and regulations is essential for protecting classified information. . . . By failing to file his 2011, 2012, and 2013 Federal income tax returns in a timely manner, Applicant did not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information.

ISCR Case No. 15-01031 at 4 (App. Bd. June 15, 2016) (citations omitted).

There is insufficient evidence about why Applicant was unable to make greater progress sooner resolving his tax issues and other delinquent debts. There is insufficient assurance his financial problems are resolved, under control, and will not recur in the future. Under all the circumstances, he failed to establish mitigation of financial considerations security concerns.

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 alcohol⁸ to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder.

AG ¶¶ 22(a) and 22(c) apply. Applicant's four alcohol-related incidents involving the police, courts, or his command occurred from 2006 to 2015. His BAC for the 2006 DUI was .126. He could not remember his BAC for the two most recent DUIs. His BAC level of .126 establishes that he engaged in binge alcohol consumption to the extent of impaired judgment.⁹

⁸Although 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>.

⁹ "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>.

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.

None of the mitigating conditions are fully established. 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 mostly responsible alcohol consumption or abstinence.

Several factors weigh against mitigation of alcohol consumption security concerns: Applicant's four DUIs; his reluctance to forswear his alcohol consumption; his binge alcohol consumption to the extent of a .126 BAC in 2006; his inability to remember the BACs on his two most recent DUIs; he recently drove after drinking beer; he recently drank to intoxication; and his alleged tampering with an interlock device after his 2013 DUI. More time without an alcohol-related incident and binge-alcohol consumption is necessary to resolve my lingering doubts about Applicant's current reliability, trustworthiness, and good judgment. Alcohol consumption security concerns are not 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 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 Applicant committed four misdemeanor-level DUI criminal offenses involving alcohol. He had three misdemeanor-level DUI convictions and one finding that he committed a DUI as part of an NJP. Applicant admitted the four incidents of criminal conduct.

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, none of the mitigating conditions fully apply. His crimes create doubt about his judgment, reliability, and trustworthiness, and raise 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. Applicant is not ready to be entrusted with access to classified information.

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, G, and J 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 a 34-year-old employee of a government contractor who has worked as an aerospace avionics and electrical technician since July 2014. He served on active duty in the Air Force from March 2004 to May 2013, and his specialty was avionics. When he left the Air Force, he was a staff sergeant. He is receiving 20 percent disability from the VA. In 2009, he received an associate's degree in avionic systems and technology. He held a security clearance for nine years while serving in the Air Force, and there is no evidence of security violations.

The SOR alleges six delinquent debts totaling \$11,125. The medical debts for \$11 and \$15 in SOR ¶¶ 1.e and 1.f are mitigated because they are too minor to raise a security concern. I accept Applicant's statement that he returned the creditor's cable equipment, and he does not owe the debt in SOR ¶ 1.b for \$795. His finances were adversely affected by circumstances partially or fully beyond his control including his unemployment after leaving the Air Force.

Applicant provided insufficient corroborating or substantiating documentary evidence of payments and established payment plans for the debts in SOR ¶¶ 1.a, 1.c, and 1.d. He did not establish he had insufficient income to make more progress sooner on more of his SOR debts. He has not filed his federal income tax return for tax year 2015, and his state tax returns for tax years 2013 and 2015. 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 had four DUI arrests from 2006 to 2015, resulting in NJP and three DUI convictions. He continues to drive after drinking alcohol, and he drinks alcohol to intoxication. It is difficult to rule out alcohol-related judgment errors in the future.

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 Guideline F, J, and G security concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time.

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 Guidelines F, J, and G security concerns are not mitigated, and it is not clearly consistent with the national interest 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 F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c and 1.d:	Against Applicant
Subparagraphs 1.e and 1.f:	For Applicant
Subparagraphs 1.g and 1.h:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a through 2.d:	Against Applicant
Paragraph 3, Guideline G:	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 or reinstate Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

MARK HARVEY
Administrative Judge