



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



In the matter of:)	
)	
REDACTED)	ADP Case No. 19-00798
)	
Applicant for Public Trust Position)	

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

12/20/2019

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant became \$65,000 past due on his home mortgage loan and had several credit card debts charged off or placed for collection. His mortgage was resolved through a foreclosure sale, but more progress is needed toward resolving his credit-card delinquencies. Applicant used cannabis or a derivative (cannabidiol) with varying frequency from 1983 to at least January 2018. His drug involvement continues to raise trustworthiness concerns. Eligibility for a public trust position is denied.

Statement of the Case

On March 29, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F, financial considerations, and Guideline H, drug involvement and substance misuse. The SOR explained why the DOD CAF was unable to find it clearly consistent with the national interest to grant or continue eligibility for a public trust position for him. The DOD CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2,

1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective within the DOD on June 8, 2017.

On August 3, 2019, Applicant responded to the SOR allegations and requested a decision based on the written record in lieu of a hearing. On September 13, 2019, the Government submitted a File of Relevant Material (FORM), consisting of five exhibits (Items 1-5). DOHA forwarded a copy of the FORM to Applicant and instructed him that any response was due within 30 days of receipt. Applicant received the FORM on September 26, 2019. No response to the FORM was received by the October 26, 2019 deadline. On November 26, 2019, the case was assigned to me to determine whether it is clearly consistent national security to grant or continue a public trust position for Applicant.

Evidentiary Ruling

Department Counsel submitted, as Item 3, a summary report of a personal subject interview (PSI) of Applicant conducted on October 19, 2018. The summary report was part of the DOD Report of Investigation (ROI) in Applicant's case. Under ¶ E3.1.20 of the Directive, a DOD personnel background report of investigation may be received in evidence and considered with an authenticating witness, provided it is otherwise admissible under the Federal Rules of Evidence. The summary report did not bear the authentication required for admissibility under ¶ E3.1.20.

In ISCR Case No. 16-03126 decided on January 24, 2018, the Appeal Board held that it was not error for an administrative judge to admit and consider a summary of personal subject interview where the applicant was placed on notice of his or her opportunity to object to consideration of the summary; the applicant filed no objection to it; and there is no indication that the summary contained inaccurate information. In this case, Applicant was provided a copy of the FORM and advised of his opportunity to submit objections or material that he wanted the administrative judge to consider. In the FORM, Applicant was advised as follows:

Note to Applicant: Exhibit 3 is a summary of your Personal Subject Interview (PSI) and is being provided to the Administrative Judge for consideration as part of the record evidence in this case. In your response to the [FORM], you can comment on whether [the] PSI summary accurately reflects the information you provided to the authorized OPM investigator(s) and you may make any corrections, additions, deletions, and updates necessary to make the summary clear and accurate. Alternatively, you may object on the ground that the report is unauthenticated by a Government witness and the document may not be considered as evidence. If no objections are raised in your response to this FORM, or if you do not respond to this FORM, the Administrative Judge may determine that you have waived any objections to the admissibility of the summary and may consider the summary as evidence in your case.

Applicant did not respond to the FORM. Concerning whether Applicant understood the meaning of authentication or the legal consequences of waiver, Applicant's *pro se* status does not confer any due process rights or protections beyond those afforded him if he was represented by legal counsel. He was advised in ¶ E3.1.4 of the Directive that he may request a hearing. In ¶ E3.1.15, he was advised that he is responsible for presenting evidence to rebut, explain, or mitigate facts admitted by him or proven by Department Counsel and that he has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision. While the Directive does not specifically provide for a waiver of the authentication requirement, Applicant was placed on sufficient notice of his opportunity to object to the admissibility of the interview summary report, to comment on the interview summary, and to make any corrections, deletions, or updates to the information in the report. In the absence of any objections, I accepted Item 3 in evidence, subject to issues of relevance and materiality in light of the entire record.

Summary of SOR Allegations

The SOR alleges under Guideline F that, as of the March 29, 2019 SOR, Applicant owed charged-off debts of \$9,224 (SOR ¶ 1.a), \$6,781 (SOR ¶ 1.b), \$5,269 (SOR ¶ 1.c), \$2,492 (SOR ¶ 1.e), \$1,340 (SOR ¶ 1.f), and \$2,666 (SOR ¶ 1.h), in addition to a collection debt of \$4,171 (SOR ¶ 1.d). Additionally, Applicant owed a deficiency of \$65,000 (SOR ¶ 1.g) on his home mortgage loan in foreclosure, and he filed a Chapter 13 bankruptcy case in July 2018 that was dismissed in August 2018 (SOR ¶ 1.i). Under Guideline H, Applicant is alleged to have used marijuana with varying frequency from about January 1983 to about January 2018 (SOR ¶ 2.a).

When Applicant answered the SOR allegations, He admitted that he incurred the debts alleged but indicated that the information about the accounts was inaccurate in that the debt in SOR ¶ 1.b had been cancelled and other accounts were undergoing repair. As for the alleged drug involvement, Applicant admitted that he had used marijuana in the past, but asserted that he stopped using marijuana regularly in 2004 and used it only on "very few and rare" instances since then. He stated that he lacked recall of any use of marijuana after 2006 and explained that he had ingested CBD "on a few separate instances" prior to his present employment. (Item 1.)

Findings of Fact

After considering the FORM, which includes Applicant's Answer to the SOR (Item 1), I make the following findings of fact.

Applicant is a 54-year-old field service representative with a pharmacy technology company. He started his current employment in April 2018. Applicant earned a bachelor's degree in June 2004 and master's degrees in business administration in August 2011 and human resource management in December 2012. He has been married to his current spouse since March 1994. His first marriage lasted a little over a year and ended in divorce in March 1993. Applicant and his spouse have two sons, ages 13 and 15. (Items 2-3.)

Applicant was previously employed as a field service engineer with a medical devices and healthcare company from April 2003 to December 2013, when he was laid off during a corporate reorganization. He was given a severance package, the terms of which are not in the record. He collected unemployment compensation of \$275 a week until June 2014, when he founded a tire distribution business with three partners. The venture was underfunded and folded after two years. From August 2014 to March 2018, he also had a part-time motor sports business, but it failed to generate the income needed to support his expenses. He closed the business when he began working for his current employer. (Item 2.)

On September 3, 2018, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86). He disclosed marijuana possession charges from January 1998 and March 1999; the use of tetrahydrocannabinol (THC) between January 1983 to January 2018; a Chapter 13 bankruptcy filing dismissed in August 2018; the foreclosure of his home mortgage; and credit-card delinquency totaling \$30,609 on nine accounts pending debt consolidation. Under the SF 86 section for additional comments, he noted that he and his spouse had initiated a debt consolidation program for her finances, and that if it worked out as planned, he would incorporate his own debts as well. (Item 2.) The salient details of his financial issues and THC use follow.

Finances

Applicant bought a home for his family in 1999. (Item 2.) In August 2005, the creditor in SOR ¶ 1.g acquired the mortgage, which had a balance of \$310,000 and required repayment at \$1,833 per month for 30 years. During the economic downturn in 2008, the home lost value to where he owed more on the mortgage than the property was worth. Under some financial distress because of the lack of employment income and seeking to lower his monthly payments, Applicant tried three times to have his loan modified. He stopped making his mortgage payments during the process, but was not successful in having his loan modified. As of August 2018, the loan was \$65,000 in arrears on a balance of \$415,933 and in foreclosure. Applicant unsuccessfully attempted a short sale to avert a foreclosure sale that was set for October 16, 2018. (Items 3-5.) When interviewed by an authorized investigator for the Office of Personnel Management (OPM) on October 19, 2018, Applicant explained that he was negotiating with the creditor to surrender the property in a “cash for keys” where the lender would agree to wipe out the difference between the \$325,000 expected sale price of the property and his loan balance. (Item 3.) When he responded to the SOR in August 2019, Applicant indicated that his house sold in foreclosure for \$328,000, which exceeded the original balance of the loan, and that the debt had been removed from his credit record. (Item 1.) He provided no corroborating documentation of the sale, but Equifax reported no mortgage trades on his credit record as of March 4, 2019. (Item 5.)

In July 2018, Applicant filed for a Chapter 13 bankruptcy (SOR ¶ 1.i) to address his delinquent mortgage loan and several credit-card delinquencies incurred because his motor sports business did not generate enough income for him to pay all his bills. He listed indebtedness totaling approximately \$700,000. Applicant completed the required pre-

petition credit counseling, but his bankruptcy case was dismissed in August 2018, reportedly because he did not meet the financial threshold required to complete the bankruptcy process. (Item 3.)

As of October 9, 2018, Applicant's credit record showed that he owed \$5,269 on a credit-card account opened in July 2015 and charged off in August 2018 after being inactive since August 2017 (SOR ¶ 1.c). Five credit cards obtained in January 2016 were charged off or in collection with balances of \$9,224 (SOR ¶ 1.a, in collection); \$6,781 (SOR ¶ 1.b, in collection); \$2,492 (SOR ¶ 1.e, charged off); \$1,340 (SOR ¶ 1.f, in collection); and \$2,666 (SOR ¶ 1.h, charged off). Additionally, a \$4,171 credit-card balance had been in collection since March 2018 (SOR ¶ 1.d). (Item 4.) During his October 2018 OPM interview, Applicant did not dispute the debts. He indicated that he had included them on his dismissed bankruptcy, and was working through a credit repair company to consolidate his debts to make monthly payments. (Item 3.) On December 31, 2018, the creditor identified in SOR ¶ 1.b had cancelled a debt of \$6,781. (Item 1.)

As of March 4, 2019, Applicant had made no payments on his credit-card delinquencies alleged in the SOR. (Item 5.) He was aware of his obligation to report the \$6,781 as cancelled debt on his income tax return (Item 1), although he provided no documentation showing that it had been included on his income tax return for tax year 2018. The \$2,666 charged-off balance on a gas company credit card (SOR ¶ 1.h) was not on his credit record with Equifax as of March 2019, but there is no evidence that it had been paid. (Item 5.)

Applicant retained the services of a debt consolidation company around the time that he began his current employment. Apparently "after several months of promises and inactivity," he terminated its services. (Item 1.) Applicant did not provide any information about payments made, if any, to the company. On May 1, 2019, Applicant contracted with another company to validate debts, dispute erroneous information on his credit reports, and to provide him with financial education. (Item 1.)

On March 29, 2019, the DOD CAF issued an SOR to Applicant, alleging in part his delinquent debts and dismissed bankruptcy. Applicant received the SOR on May 6, 2019. On May 22, 2019, he requested an extension of time to respond to the SOR. He indicated that he had tried unsuccessfully to reach settlements with his creditors before hiring the first debt repair firm, which then failed to perform as expected. He expressed satisfaction with the progress being made by the company currently retained to investigate, and where necessary dispute the items on his credit report, but he also indicated that the company had some problems locating two accounts (not identified) listed in the SOR. He stated that he expected to have his debts settled within the next six months. (Item 1.)

On July 30, 2019, the debt repair company certified that the dismissed bankruptcy and the consumer debts in SOR ¶¶ 1.b and 1.c had been deleted from one or more of the three credit bureaus' records and that the debts in SOR ¶¶ 1.a and 1.d-1.f were "undergoing repair." (Item 1.) In response to the SOR on August 3, 2019, Applicant indicated that the credit-card debt in SOR ¶ 1.h had been deleted from his record all three

credit bureaus, but the accounts in SOR ¶¶ 1.a and 1.d-1.f were still “undergoing repair.” He added that it was taking some time to get the items resolved, explaining as follows:

Every disputed item has 45 days to respond and if no response they get another 45 days. Then once validated we initiate a mutually agreed upon settlement that will reflect on my credit report eventually. These results can take 6 months or more to reflect on my credit report, yet we are seeing results already. (Item 1.)

Applicant had an opportunity to provide updated information in rebuttal to the FORM. There is no indication that he responded by the October 26, 2019 deadline. No information was presented about Applicant’s present income or expenses. During his October 2018 interview, Applicant indicated that he was able to pay his current bills and debts on his current income. (Item 3.) He provided no details about the extent of his spouse’s debts that were reportedly being repaid through debt consolidation. Available information shows that Applicant owes approximately \$150,140 in federal student loans. (Item 5.) Applicant told the OPM investigator that his federal loans were in a forbearance program with income-based repayment to start sometime in 2019. (Item 3.) It is unclear whether he has started repaying his student loans.

Drug Involvement

Applicant was arrested twice on marijuana charges. In January 1988, he was pulled over for making an improper left turn, and marijuana was found in his car. He was charged with felony possession of marijuana. Adjudication was withheld and he was required to make charitable donations totaling \$1,000. He denies that he intended to sell any of the marijuana in his possession. In March 1999, he was similarly stopped for a traffic violation, and a small amount of marijuana was discovered in his ashtray. The drug charge was not prosecuted. (Items 2-3.)

On his September 2018 SF 86, Applicant responded affirmatively to whether he had used any illegal drug in the last seven years and stated that he had inhaled vapor from cannabis oil on several occasions, but that he was not a user and did not like it. Regarding his use of THC between the listed dates of January 1983 and January 2018, Applicant stated:

Over the years it was helpful for dealing with stress, it no longer works for me. I was a weekly user prior to 2004. Since then I have tried it on a few occasions. I have found holistic alternatives to dealing with the day to day stresses.

Applicant denied any intention to use cannabis in the future because it makes him anxious and nervous and stated that he has turned to melatonin and valerian root as alternatives. (Item 2.)

Applicant provided a detailed account of his involvement with THC and cannabis derivatives when interviewed by the OPM investigator in October 2018. He reported a first use of marijuana in January 1983. He purchased the drug from a friend and smoked it through a pipe in his residence. He continued to use marijuana on a daily basis until his marriage in March 1994. From March 1994 to the birth of his first son in November 2004, Applicant used marijuana once or twice weekly. His use of marijuana then declined to once a week until 2008, when he stated that he decided to cease his use because marijuana made him anxious. He stated that he abstained from all forms of cannabis until January 2018, when he tried CBD obtained from a friend. He told the OPM investigator in August 2018 that he did not like the effects of the CBD and would not use it again. Applicant told the OPM investigator that he purchased the marijuana he used over the years from a friend, although he did not indicate whether or not he was continuing to associate with the person who supplied him with marijuana and CBD. (Item 3.)

Applicant now claims that his use of marijuana after 2004 was rare, and that he cannot recall using marijuana after 2006. He instead asserts that since then, he “tried” CBD oil and vapor, extracted from hemp, as a sleep aid:

I have done some research and found that CBD from hemp is now legal on a federal level. For CBD hemp oil products to test positive on a drug test, an individual would have to be using unusually large amounts (above 1000-2000 mg) of the product. Hemp based CBD oils, when used in low doses, are unlikely to result in a positive drug test because they often don't contain high enough levels of THC for detection. Although unregulated CBD hemp oils contain some THC it is a negligible amount of up to .3% THC or less and thus will not even be detectable in [a] traditional drug test. Again, I am not a user [but] I did try it on a few separate instances. Many legitimate CBD products contain small amounts of THC, the component that is federally controlled. And when taken regularly over as little as four to six days, that THC can accumulate in the body, according to several studies. My use of CBD was sporadic having tried it on a rare occasion prior to any employment with [my employer]. (Item 1.)

Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.” The standard that must be met for assignment to sensitive duties is that, based on all available information, the person’s loyalty, reliability, and trustworthiness are such that assigning the person to sensitive duties is clearly consistent with national security. The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 14, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions 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 the factors listed in the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is "an examination of a sufficient period and a careful weighing of a number of variables" known as the "whole-person concept." The administrative judge must consider all available reliable information about the person, past and present, favorable and unfavorable, in making a decision. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

The person who seeks access to sensitive information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of sensitive information. See Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F: Financial Considerations

The trustworthiness concerns about financial considerations are articulated in AG ¶ 18:

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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

An applicant for a public trust position is not required to be debt free, but is required to manage his finances in a way as to exhibit sound judgment and responsibility. The concern is broader than the possibility that an applicant might knowingly compromise sensitive information for the money to satisfy his debts. An applicant's self-control,

judgment, and other qualities essential to protecting sensitive information must be considered. See e.g., ISCR 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant stopped paying on his home mortgage loan in an ultimately unsuccessful effort to obtain a modification to lower his monthly payment. By August 2018, his loan was \$65,000 past due and in foreclosure. He relied on consumer credit, including on several credit cards obtained in January 2016, to pay some expenses because his motor sports business was not generating enough income to meet his expenses. By the summer of 2018, he owed about \$31,943 in delinquent credit-card balances. He filed a Chapter 13 bankruptcy petition in July 2018 to address the mortgage and his credit-card delinquencies, but the bankruptcy was dismissed only a few weeks later. Disqualifying conditions AG ¶¶ 19(a), “inability to satisfy debts,” and 19(c), “a history of not meeting financial obligations,” are established.

The burden is on Applicant to mitigate the negative implications for his financial judgment raised by the delinquent debts. Application of the aforesaid disqualifying conditions triggers consideration of the potentially mitigating conditions under AG ¶ 20. One or more of the following conditions may apply in whole or in part:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

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

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Evidence shows that the mortgage debt (SOR ¶ 1.g) and the charged-off debts in SOR ¶¶ 1.c and 1.h have been removed from his credit record. 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 if they become no longer legally collectible because of a

state statute of limitations, whichever is longer. See Title 15 U.S.C. § 1681c. Debts may be dropped from a credit report upon dispute when creditors believe the debt is not going to be paid or when the debt has been charged off. The mere fact that debts have been deleted from a credit report does not necessarily mean that they were not owed at one time. Applicant presented no evidence that the deleted debts were not incurred by him. However, it appears likely that his delinquent mortgage loan was resolved in the foreclosure sale. He provided documentation showing that the creditor in SOR ¶ 1.b cancelled his debt, thereby relieving him of the legal responsibility for repayment of \$6,781 in delinquent debt. However, he presented no evidence indicating that the debt in SOR ¶ 1.h has been paid, settled, or otherwise resolved. Moreover, Applicant has yet to make any payments toward those debts in SOR ¶¶ 1.a and 1.c-1.f that are reportedly “undergoing repair.” Those debts are 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. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)). AG ¶ 20(a) does not apply.

Applicant’s financial problems were partially caused by circumstances outside of his control. Applicant’s unexpected layoff in December 2013 from his job of ten years is a circumstance contemplated within AG ¶ 20(b). Even so, he was granted a severance package and collected unemployment for six months. It was his decision to start the tire distribution business with three partners and his own motor sports business. He assumed the risk that one or both of the business ventures would not succeed. He knowingly incurred credit balances when his income was not enough to cover his expenses. Furthermore, for full mitigation under AG ¶ 20(b), an individual is required to act responsibly. He filed for a Chapter 13 bankruptcy in July 2018, but it was dismissed in August 2018. He then retained the services of a credit repair company that apparently made little progress toward resolving the credit-card debts at issue. Despite being on notice as of October 2018 that his debts were of concern for the DOD, Applicant took his time before contracting on May 1, 2019, with the company now working on his behalf. Had he been more proactive about resolving his debts, he might have been able to show more progress toward resolving his financial issues.

AG ¶ 20(c) might have some applicability, assuming Applicant’s mortgage delinquency was resolved through a foreclosure sale. However, if the property sold for \$328,000 as Applicant claims, it would not have been enough to cover the \$415,933 balance reportedly owed as of August 2018. The lender may well have agreed to accept the sales price in full settlement of his loan, which was originally for \$310,000, and the debt no longer appears on his credit record. However, he provided no corroborating documentation showing that the mortgage delinquency has been resolved. Regarding the \$6,781 in cancelled credit-card debt, the debt is no longer a source of financial pressure for Applicant. That being said, he benefitted from credit extended to him without having to pay for it in the end. While some consideration of AG ¶ 20(d) is warranted because he has a credit repair company working on verifying his debts towards possible settlements, he has not made enough progress to enable a predictive judgment that the credit card delinquencies “undergoing repair” will be resolved in the near future. An applicant is not

required to establish that he has paid off each debt in the SOR, or even that the first debts paid be those in the SOR. See ISCR Case No. 07-06482 (App. Bd. May 21, 2008). However, the Appeal Board recently reiterated in ADP Case No. 17-0063 (App. Bd. Dec. 19, 2018) that “an applicant must demonstrate a plan for debt repayment, accompanied by concomitant conduct, that is, conduct that evidences a serious intent to resolve the debts.” In evaluating his financial situation overall, I cannot ignore that Applicant has made no payments on the delinquencies. Applicant told an OPM investigator in October 2018 that his current expenses are being repaid on time. Without specific information in the record about his income or expenses, it is difficult to conclude that his financial situation is sufficiently under control. Applicant owes federal student loans of \$150,140 that will soon be or are no longer in forbearance. As of October 2018, his spouse had debts of her own that had been consolidated in a repayment plan. Assuming that Applicant is offered settlements on one or more of the debts in the SOR, it is unclear whether he will be able to satisfy the terms. The financial considerations concerns are not adequately mitigated.

Guideline H: Drug Involvement and Substance Misuse

The trustworthiness concerns about drug involvement and substance misuse are articulated in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual’s reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person’s ability or willingness to comply with laws, rules, and regulations. *Controlled substance* means any “controlled substance” as defined in 21 U.S.C. 802. Substance misuse is the generic term adopted in this guideline to describe any of the behaviors listed above.

Applicant admitted on his SF 86 that he used cannabis (marijuana or CBD) between January 1983 and January 2018. He told an OPM investigator in October 2018 that he first used marijuana in January 2013 and that he continued to use marijuana daily to March 1994, once or twice weekly from March 1994 to November 2004, and once weekly from November 2004 to 2008, when he decided to stop using the drug. He also told the investigator that he used CBD once in January 2018, but that he did not like it so he did not use it again. When he answered the SOR in August 2018, he discrepantly claimed that he could not recall any instance of using marijuana since 2006, but he had tried CBD from hemp as a sleep aid “on a few separate instances” before he started his current job. Even if he used CBD exclusively after 2008, he has admitted to a history of illegal drug involvement spanning some 35 years. AG ¶ 25(a), “any substance misuse,” applies. CBD is one of over 100 chemical compounds known as cannabinoids found in the cannabis sativa L. plant (marijuana). Unlike THC, CBD does not have psychoactive properties. In June 2018, the Food and Drug Administration approved the use of CBD in treatment of seizures associated with two forms of epilepsy, and added CBD to the list of controlled

substances in Schedule V, but CBD remains illegal under federal law without a valid prescription. Applicant did not have a prescription for CBD, and it is no excuse that the CBD would not trigger a positive result for cannabinoids. Applicant purchased marijuana for his personal consumption from a friend or friends over the years. His purchases were not alleged in the SOR, but AG ¶ 25(c), "illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; is still established because of his possession of cannabis for personal use.

Two mitigating conditions under AG ¶ 26 could apply in whole or in part. They are:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including but not limited to:

(1) disassociation from drug-using associates and contacts;

(2) changing or avoiding the environment where drugs were used; and

(3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

Although Applicant's involvement with cannabis has been infrequent since 2008, his many years of regular cannabis use and his recent involvement with CBD preclude mitigation under AG ¶ 26(a). Although he expressed an intention to avoid future use of marijuana or any cannabis derivative such as CBD, his present abstinence since January 2018 must be evaluated in light of the other evidence of record, including his long history of drug abuse; his inconsistent statements about marijuana use since 2006 and about the number of times that he used CBD; the lack of information about whether he has disassociated himself from the friend or friends from whom he purchased marijuana and obtained CBD; and his rationalization that his CBD involvement was somehow less serious because it lacked the THC component that would trigger a positive result in a drug screen. A lengthier period of abstinence is required for me to safely conclude that his drug involvement will not reoccur.

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 her conduct and all relevant circumstances in light of the nine adjudicative process factors in 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.

Applicant requested a decision on the written record, so it was incumbent on him to provide sufficient information about his circumstances to show that his financial situation is sufficient stable and not likely to present a trustworthiness concern and to show that he has put his drug involvement and substance misuse behind him. Not enough is known about Applicant's financial situation, including about his income and expenses, for me to conclude that he is able to address the SOR debts in the near future. He exhibited very poor judgment in violating the drug laws for so many years. After considering all the facts and circumstances, I conclude that it is not clearly consistent with national security to grant Applicant eligibility for access to sensitive information 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
Subparagraphs 1.a-1.i:	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

Elizabeth M. Matchinski
Administrative Judge