



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
[Name Redacted]) ISCR Case No. 19-02891
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrea Corrales, Esquire, Department Counsel
For Applicant: *Pro Se*

11/13/2020

Decision

HOGAN, Erin C., Administrative Judge:

On November 29, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline H, Drug Involvement; Guideline E, Personal Conduct; and Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented within the Department of Defense on June 8, 2017.

On January 7, 2020, Applicant answered the SOR and requested a hearing before an administrative judge. On August 10, 2010, another administrative judge was assigned the case. On March 30, 2020, a Notice of Hearing was issued, scheduling the hearing on March 30, 2020. The hearing was cancelled on March 18, 2020, as a result of the COVID-19 pandemic. A Notice of Hearing was issued on August 10, 2020, rescheduling the hearing for September 15, 2020. The case was transferred to me on September 15, 2020, because of the unavailability of the assigned administrative judge. The hearing was held as scheduled. During the hearing, the Government offered seven exhibits which were admitted as Government (Gov) Exhibits 1 - 7. Applicant testified and the record was held open until September 29, 2020, to allow the Applicant to submit

additional exhibits. Applicant requested and was granted an extension until October 12, 2020, to submit relevant documents. He timely submitted a document that was admitted as Applicant Exhibit (AE) A (consisting of seven pages), without objection. The transcript was received on September 28, 2020. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant admits to the allegations in SOR ¶¶ 1.a, 1.d, and 1.e, and denies all remaining SOR allegations.

Applicant is a 29-year-old employee of a DOD contractor who seeks a security clearance. This is his first time applying for a security clearance. He has been employed with his current employer since March 2020. He has a high school diploma and some technical school credits. He lives with his girlfriend and has an eight-year-old daughter from a prior relationship. He has never been married. (Tr.9; Gov 1) (Note: The facts in this decision do not specifically describe employment, names of witnesses, or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.)

Guideline H – Drug Involvement

Under the drug involvement concern, the SOR alleged Applicant used marijuana with varying frequency from January 2014 to July 2016. (SOR ¶ 1.a: Gov 1 at 43-44; Gov 2 at 8) He is alleged to have purchased and distributed marijuana between January 2014 and July 2018. (SOR ¶ 1.b: Gov 2 at 8) It is alleged that Applicant told the investigator conducting his background investigation that he intends to continue to purchase and distribute marijuana. (SOR ¶ 1.c: Gov 2 at 8) Applicant was arrested in October 2014 and charged with possession of marijuana. (SOR ¶ 1.d: Gov 1 at 40-41; Gov 2 at 7; Gov 3; Gov 5). Finally, Applicant was arrested in July 2016 and charged with possession of marijuana. (Gov 1 at 41-42; Gov 2 at 7; Gov 4; Gov 5). Applicant pled guilty to both offenses. Applicant was issued a citation for possession of marijuana, a misdemeanor offense, during both incidents. He was not arrested.

The police officer involved in the October 31, 2014, incident summarized the events leading to Applicant's citation for possession of marijuana in a police report. He stopped a car driven by Applicant's girlfriend for speeding. Applicant was a passenger in the car. Once the window was rolled down, the police officer noticed a strong smell of fresh marijuana coming within the vehicle. He told Applicant and his girlfriend that he was going to search the car for marijuana and asked them to step out of the car. Fresh marijuana wrapped in white paper was discovered in an open compartment by the dashboard. Five partially smoked marijuana cigarettes were found inside the ash tray by the dashboard. Applicant and his girlfriend were separately read their Miranda rights. Applicant's girlfriend said that she does not smoke marijuana but Applicant does and smokes in the car with his friends. She said all of the marijuana in the car belonged to Applicant. After being read his rights, Applicant admitted that all of the marijuana in the car belonged to him. He was issued a summons for possession of marijuana. (Gov 3 at 7)

The police report for the July 7, 2016, indicated that this incident began when Applicant pulled into a convenience store. When he walked into the store, a police officer who was outside the convenience store near Applicant's car smelled a strong odor of marijuana coming from Applicant's car. When Applicant exited the store, the officers asked Applicant if the car belonged to him. They told him that they smelled a strong smell of marijuana coming from his car. They told him they were going to search his car based on probable cause. Applicant became upset and told them they did not have probable cause to search the car. The car was searched and a plastic bag of green leafy plant material was found in the center console. The green leafy plant material tested positive as marijuana. The marijuana was confiscated and Applicant was issued a summons for possession of marijuana. (Gov 4 at 6-7)

In his response to the SOR, Applicant admits the allegations in SOR ¶¶ 1.a, 1.d and 1.e. He clarifies his answer to SOR ¶ 1.a by indicating he used marijuana off and on between 2014 and 2015. He denies the allegations in SOR ¶¶ 1.b and 1.c because he claims he never distributed marijuana and "would never say a statement like that." (Response to SOR, dated January 7, 2020)

Personal Conduct

Under the Personal Conduct Concern, the SOR cross alleges the allegations listed under the Guideline H, Drug Involvement Concern. In addition, the SOR alleges under the Personal Conduct Concern that Applicant falsified material facts during his background investigation interview on July 18, 2018; by stating:

(SOR ¶ 2.b) that he used marijuana from January 2014 to February 2014, when he used marijuana at least from January 2014 to July 2016;

(SOR ¶ 2.c) that he was not using marijuana when he was cited for possession of marijuana in October 2014; and

(SOR ¶ 2.d) that he was not using marijuana when he was cited for possession of marijuana in July 2016.

On April 30, 2018, Applicant submitted an electronic questionnaire for investigations processing (e-QIP) also known as a security clearance application. In response to questions in Section 22, Applicant listed his two citations for possession of marijuana in 2014 and 2016. In response to questions in Section 23 – Illegal Use of Drugs or Drug Activity, Applicant estimated that he used marijuana between January 2014 and July 2016, in the amount of "7-10 times total." (Gov 1, sections 22 and 23, at 40-44)

On July 18, 2018, Applicant was interviewed by an investigator who was conducting his security clearance background investigation. The investigator subsequently prepared an unsworn summary of the interview. Regarding his October 2014 arrest for possession of marijuana, Applicant told the investigator that he claimed the marijuana in the car was his to protect his girlfriend. Applicant also said the marijuana joints were left behind in the car by someone else. During his July 2016

citation for misdemeanor possession of marijuana, Applicant again claimed the marijuana found in his car did not belong to him. He purchased the marijuana for a family member. (Tr. 41-42 Gov 2 at 6-7)

Applicant told the investigator that he smoked marijuana between January 2014 and February 2014, on average of one to two times per week. He does not know why he listed the last date of marijuana use on paperwork as July 2016. He told the investigator that he occasionally purchased marijuana for friends and family members when requested. He is aware that it is illegal to purchase and possess marijuana in the state where he resides. He told the investigator that he intends to continue to purchase marijuana for family and friends when requested. (Gov 2 at 8)

The Defense Office of Hearings and Appeals Department Counsel sent Applicant a set of interrogatories. The interrogatories attached a summary of Applicant's July 18, 2018, interview with the investigator conducting his background investigation. Applicant was told to read the summary of the interview. He was given an opportunity to point out any inaccuracies in the summary of the interview. Applicant acknowledged that the summary of the interview was accurate. He swore (or affirmed) that he read the enclosed report of his July 18, 2018 interview and that he found the report to be accurate or that he amended the report to make it accurate. He signed the document before a notary on October 2, 2019. (Gov 2)

During the hearing, Applicant testified that he never distributed marijuana. He said he used marijuana "on and off" from 2014 to 2015. He again stated that when he was charged with possession of marijuana in 2016, the marijuana was not his. He was charged because it was found in his car. (Tr. 19) Applicant also admitted during the hearing that he used marijuana during the 2014 arrest for marijuana possession. He admitted that marijuana was his and not his girlfriend's. (Tr. 44-46)

Regarding his July 2016 arrest for marijuana possession, Applicant testified that he did not use marijuana in 2016. He claims he was charged with possession of marijuana because no one else admitted ownership of the marijuana. He has occasionally purchased a small amount of marijuana for a family member. He did not believe that purchasing marijuana for a family member was considered marijuana distribution. At the hearing, Applicant claimed the only time he purchased marijuana for a family member was in July 2016. He purchased about \$20 worth for his cousin. (Tr. 45-49, 52)

Later in the hearing, Applicant claimed that he did not use marijuana in 2015. Applicant testified that his last day of marijuana use was in October 2014. He has not associated with people using marijuana for several years. His marijuana use was recreational. He does not have a drug problem. (Tr. 51-54)

Financial Considerations

The SOR alleged that Applicant has a history of financial irresponsibility. The SOR alleged 11 delinquent accounts that were placed for collection, an approximate total balance of \$13,149. This was, in large part, the result of low-paying jobs. The SOR alleged 11 delinquent accounts to include: a \$950 cable television account placed for collection (SOR ¶ 1.a: Gov 2 at 9; Gov 7 at 1); a \$682 medical account placed for collection (SOR ¶ 1.b: Gov 2 at 9; Gov 6 at 4; Gov 7 at 2); a \$542 satellite television account placed for collection (SOR ¶ 1.c: Gov 7 at 2); a \$429 medical account placed for collection (SOR ¶ 1.d: Gov 7 at 2); a \$729 student loan account that was placed for collection (SOR ¶ 1.e: Gov 7 at 2); and a \$6,166 debt owed after an automobile repossession (SOR ¶ 1.f: Gov 6 at 2-3).

Additional delinquent debts include: a \$293 cell phone account placed for collection (SOR ¶ 1.g: Gov 1 at 51; Gov 2 at 9; Gov 6 at 5; Gov 7 at 4); a \$1,023 cable television account placed for collection (SOR ¶ 1.h: Gov 6 at 4); a \$1,159 cell phone account placed for collection (SOR ¶ 1.i: Gov 2 at 9; Gov 6 at 4); a \$617 satellite television account placed for collection (SOR ¶ 1.j: Gov 6 at 4); and a \$550 debt placed for collection (SOR ¶ 1.k: Gov 1 at 51-52; Gov 2 at 9; Gov 6 at 5).

Applicant obtained good employment in 2018. From 2018 to early 2020, he earned about \$41,000 a year. His current annual income is \$44,000. (Tr. 22, 27) In early 2018, Applicant began working with a credit counseling group to help him repair his credit and to settle accounts. He stopped working with them a few months before the hearing because he felt they were working too slowly. He decided to pay off the debts on his own. (Tr. 27-29; Gov 2 at 8). Applicant said all of his debts were paid off. The record was held open after the hearing to provide Applicant the opportunity to provide a copy of his agreement with the credit repair firm; a copy of his budget, a copy of receipts or other documentation which proved the debts were paid, and a copy of his most recent credit report. (Tr. 17-18, 55-57)

The status of the debts alleged in the SOR are as follows:

SOR ¶ 3.a: \$950 cable television account placed for collection: Applicant denies this debt. He claims it has been paid. He was going to provide proof of payment after the hearing. He did not provide proof of payment. (Tr. 30)

SOR ¶ 3.b: \$682 medical debt placed for collection: Applicant denies this debt. He claims it was paid. The October 2019 credit report indicated that the debt was being disputed. Applicant did not provide further evidence indicating that the debt was resolved. (Tr. 30; Gov 7 at 2)

SOR ¶ 3.c: \$542 satellite television account placed for collection: Applicant denies this debt. He claims it was removed from his credit report. The company claimed he had equipment which belonged to them. He claims he returned the equipment. A debt resolution company helped him dispute this debt. It was removed from his credit report a few months before the hearing. Applicant said he would provide

proof the debt was resolved after the hearing. He did not provide proof the debt was resolved after the hearing. (Tr. 33)

SOR ¶ 3.d: \$429 medical account placed for collection: Applicant denied this debt. He provided proof the debt was resolved after the hearing. (Tr. 34-35; AE A at 4)

SOR ¶ 3.e: \$729 private student loan placed for collection: Applicant claims he entered a payment plan about a year ago. He pays \$100 a month. He testified that he paid the debt off a few months before the hearing. He said he would provide proof after the hearing. He did not provide proof that the debt was resolved. (Tr. 32-33)

SOR ¶ 3.f: \$6,166 automobile repossession debt. Applicant disputes the amount of the debt. He believes he only owes \$4,000. He formally disputed the debt and is waiting for the result of the dispute. He provided no updates on the status of the debt after the hearing. (Tr. 35-36)

SOR ¶ 3.g: \$293 cell phone account placed for collection: Applicant disputes this debt. He claims he paid off the debt. He said he would provide proof after the hearing. He did not submit proof after the hearing. (Tr. 30)

SOR ¶ 3.h: \$1,032 cable television account placed for collection: Applicant disputes this debt. He claims the debt is paid and will provide proof after the hearing. He did not submit proof after the hearing. (Tr. 30)

SOR ¶ 3.i: \$1,159 cell phone account placed for collection: Applicant denies this debt. He claims the debt is paid and said he would provide proof after the hearing. Applicant did not provide proof after the hearing. (Tr. 30)

SOR ¶ 3.j: \$617 satellite television account placed for collection: Applicant testified that he paid off the account a few months before the hearing. He intended to provide proof of payment after the hearing. He did not provide proof after the hearing. (Tr. 37-38)

SOR ¶ 3.k: \$550 personal bank loan placed for collection: Applicant claims he disputed the amount owed. He settled the debt a few months ago for about \$300 to \$400. He said he would provide proof of payment after the hearing. He did not provide proof after the hearing. (Tr. 38-39)

Applicant is not aware of any other delinquent debts. He paid off two student loans two months ago and is paying towards two student loans that are not delinquent. (AE A at 2) He is on a payment plan for his 2019 state and federal income taxes. In May 2020, he started making \$155 monthly payments to the state department of revenue. He believes he owes a little over \$2,000 in state taxes. He owes about \$4,000 towards his 2019 federal income taxes. He started a payment plan around March or April 2020. He pays \$500 each month towards his federal tax debt. He claims he is current towards his tax payments. (Tr. 39-41) He was given the opportunity to provide proof that he was making payments towards his state and federal income tax debts after the hearing. He did not submit anything after the hearing.

He did not provide a copy of his credit repair agreement, a current budget, or current credit report in his post-hearing submissions.

Policies

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny 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.

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

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

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

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

DOD and Federal Government Policy on Marijuana Use

On October 25, 2014, the Director for National Intelligence, issued a memorandum titled, “Adherence to Federal Laws Prohibiting Marijuana Use” addressing concerns raised by the decriminalization of marijuana use in several states and the District of Columbia. The memorandum states that changes to state and local laws do not alter the existing National Security Adjudicative Guidelines. “An individual’s disregard for federal law pertaining the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations.”

On May 26, 2015, the Director of the United States Office of Personnel Management (OPM) issued a memorandum titled, “Federal Laws and Policies Prohibiting Marijuana Use.” The Director of OPM acknowledged that several jurisdictions have decriminalized the use of marijuana, allowing the use of marijuana for medicinal purposes and/or for limited recreational use but states that Federal law on marijuana remains unchanged. Marijuana is categorized as a controlled substance under Schedule I of the Controlled Substances Act. Thus knowing or intentional marijuana possession is illegal, even if the individual has no intent to manufacture, distribute, or dispense marijuana.

Guideline H, Drug Involvement

The security concern relating to the guideline for Drug Involvement is set out in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription drug 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.

The guideline notes several disqualifying conditions that could raise security concerns. I find the following drug involvement disqualifying conditions apply to Applicant’s case.

AG ¶ 25(a) any substance misuse; and

AG ¶ 25(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

The SOR alleges and Applicant admits he used marijuana on various occasions between 2014 – 2015. He admits to receiving citations for possession of marijuana in

October 2014 and October 2016. There is sufficient evidence to conclude that Applicant distributed marijuana on occasion to friends and family members. AG ¶ 25(a) and AG ¶ 25(c) apply.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline H, Drug Involvement. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005))

Guideline H also includes examples of conditions that could mitigate security concerns arising from drug involvement. The following mitigating conditions potentially apply to the Applicant's case:

AG ¶ 26(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; and

AG ¶ 26(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.

AG ¶ 26(a) applies because four years have passed since Applicant's last involvement with marijuana. Applicant has matured and no longer uses marijuana.

AG ¶ 26(b) partially applies. Applicant stopped using marijuana in 2016. He no longer associates with people who use marijuana. Although he sold marijuana to friends and family members in the past. He no longer does this. It does not appear that he sold marijuana for profit. This mitigating condition is given less weight because he did not provide a signed statement of intent to refrain from all drug involvement and substance misuse.

Overall, Applicant met his burden to mitigate the security concerns raised under Guideline H, Drug Involvement because of his lengthy abstinence from using marijuana.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during the national security or adjudicative processes.

The following disqualifying conditions potentially apply to Applicant's case:

AG ¶ 16(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other government representative;

AG ¶ 16(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information;

AG ¶ 16(e) personal conduct, or concealment of information about one's conduct , that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

- (1) engaging in activities which, if know, could affect the person's personal, professional, or community standing.

Applicant made numerous conflicting statements regarding his marijuana use. On his security clearance application, he stated he used marijuana from January 2014 to July 2016, a total of seven to ten times. During his security clearance background investigation interview in July 2018, he said he used from January 2014 to February 2014, on average of one to two times per week. In his response to the SOR, he admitted that he used marijuana "off and on" between 2014 and 2015. He testified the same during the hearing.

While Applicant admits his citations for possession of marijuana on October 31, 2014, and July 13, 2016, he denied the marijuana belonged to him. Police reports indicate that on both incidents, the attending police officer smelled a strong odor of

marijuana coming from the car that Applicant was in which gave them probable cause to search his vehicle. Applicant told the investigator conducting his background investigation interview in July 2018, that he claimed ownership of the marijuana during the October 2014 arrest in order to protect his girlfriend. Regarding both arrests, Applicant told the investigator that marijuana did not belong to him, even though marijuana was located in his vehicle. During the hearing, Applicant testified that he used marijuana on the day he was cited for possession of marijuana in October 2014 and that the marijuana belonged to him. He still maintains he did not use marijuana on the date of his July 2016 citation for marijuana possession.

AG ¶ 16(b) applies with respect to Applicant's minimization of the extent of his marijuana use (SOR ¶ 2.b) and his denial that he used marijuana on the day of his October 2014 citation for marijuana possession (SOR ¶ 2.c) to the investigator conducting his background investigation interview. Applicant's conflicting statements indicate that he deliberately withheld material facts from the background investigator. He later affirmed the investigator's summary of what occurred during the interview was accurate. I find for Applicant with respect to SOR ¶ 1.d because there is not sufficient evidence to conclude Applicant used marijuana on the day of his July 2016 citation for marijuana possession.

AG ¶ 16(c) applies to Applicant's history of marijuana involvement, and his conflicting statements about his marijuana involvement. Applicant's past conduct raises issues about his judgment, reliability, and willingness to comply with rules and regulations. This raises doubts as to Applicant's ability to protect classified information.

AG ¶ 16(e) applies because Applicant's illegal marijuana use and involvement has the potential to affect his personal, professional, or community standing.

Under Guideline E, the following mitigating conditions potentially apply in Applicant's case:

AG ¶ 17(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

AG ¶ 17(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

AG ¶ 17(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

None of the mitigating conditions apply. Applicant's conflicting statements regarding his marijuana use and involvement raise questions about his trustworthiness and reliability. A person entrusted with classified information must be reliable and have

good attention to detail. Applicant's inconsistent statements during his security clearance background investigation raises questions about his trustworthiness and his ability to protect classified information. Personal Conduct Security Concerns are not mitigated.

GUIDELINE F: Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are relevant to Applicant's case include:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has a long history of financial problems. He incurred 11 delinquent debts with an approximate total balance of \$13,149. AG ¶¶ 19(a) and 19(c) apply to Applicant's case.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

The Government's substantial evidence and Applicant's admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

AG ¶ 20 includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

(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 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: and

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

AG ¶ 20(a) does not apply because Applicant's financial problems are ongoing. Applicant did provide proof that most of the debts alleged in the SOR have been resolved.

AG ¶ 20(b) partially applies because Applicant's financial situation was adversely affected by his periods of underemployment. These circumstances were beyond Applicant's control and adversely affected his ability to pay his bills. However, this mitigating condition is given less weight because Applicant has not demonstrated he acted responsibly under the circumstances. While Applicant claims he resolved all of the debts alleged in the SOR, he failed to provide proof that each debt was resolved. For this reason AG ¶ 20(b) is given less weight.

AG ¶ 20(c) does not apply. Applicant did not take a formal financial counseling course. The majority of his debts remain unresolved.

AG ¶ 20(d) applies towards the \$429 medical debt alleged in SOR ¶ 1.d, because Applicant provided proof that he resolved this account. He failed to

provide proof that he was making a good-faith effort to resolve the other accounts alleged in the SOR even though he was given close to four weeks after the hearing to provide this information. Applicant has not demonstrated a good-faith effort towards resolving his delinquent debts. Applicant has not met his burden of proof to provide mitigating concerns under Guideline F.

Whole-Person Concept

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

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

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

I find Applicant mitigated the security concerns under Guideline H because it has been more than four years since he last used marijuana. However, Applicant's inconsistent statements about his past marijuana use raise concerns about his trustworthiness and reliability. Even if it were not deliberate, his lack of attention to detail raises issues about his ability to handle and protect classified information.

Applicant's failure to provide proof that he paid off or is making consistent payments towards the debts alleged in the SOR, prevents me from mitigating the security concerns under Financial Considerations. Applicant did not demonstrate he is making a good-faith effort to resolve his debts.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Concerns raised by Applicant's illegal marijuana use are mitigated. Concerns are not mitigated under personal conduct and financial considerations.

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 H:	FOR APPLICANT
Subparagraphs 1.a – 1.e:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a, 2.d:	For Applicant
Subparagraphs 2.b, 2.c:	Against Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraph 3.d:	For Applicant
Subparagraphs 3.a -3.c, 3.e-3.k:	Against Applicant

Conclusion

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

ERIN C. HOGAN
Administrative Judge