



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



In the matter of:)
)
) ISCR Case No. 20-01845
)
Applicant for Security Clearance)

Appearances

For Government: Moira Modzelewski, Esq., Department Counsel
For Applicant: *Pro se*

06/24/2021

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant experienced several events in his life that led him to obtain treatment for diagnosed major depressive disorder, cannabis abuse, and alcohol dependence-in remission. He defaulted on several financial accounts. He continues to use medical marijuana. While the psychological conditions security concerns are mitigated, alcohol consumption, drug involvement, and financial considerations security concerns persist. Clearance eligibility is denied.

Statement of the Case

On October 27, 2020, the Defense Counterintelligence and Security Agency (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline I, psychological conditions, Guideline G, alcohol consumption, Guideline H, drug involvement and substance misuse, and Guideline F, financial considerations. The SOR explained why the DCSA CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DCSA CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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.

Applicant submitted an undated response to the SOR and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). Referral of the case to the Hearing Office was delayed because of the COVID pandemic. On February 17, 2021, Department Counsel indicated that the Government was ready to proceed to a hearing. On April 12, 2021, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national security interests of the United States to grant or continue a security clearance for Applicant. On April 20, 2021, I received the case assignment and file and informed Applicant of the possibility of an online video hearing, which he accepted. Following a successful test of the Defense Collaboration Services (DCS) system on April 29, 2021, I issued a notice scheduling Applicant's DCS video teleconference hearing for May 20, 2021.

At the hearing, six Government exhibits (GEs 1-6) and five Applicant exhibits (AEs A-E) were admitted. Applicant objected to the report of his February 2020 psychological evaluation (GE 2) in that he met with the psychologist only one time, and to a May 2018 credit report (GE 4) based on the outdated nature of the information. I admitted both documents in evidence, as his objections went to the weight to be afforded the information after consideration of the record evidence. GEs 1, 3, and 5-6 and AEs A-E were admitted in evidence without any objections. The Government withdrew allegation SOR ¶ 4.f pertaining to Applicant's mortgage loan. Applicant testified, as reflected in a hearing transcript (Tr.) received on June 1, 2021.

Findings of Fact

The SOR alleges under Guideline I (SOR ¶ 1.a) that Applicant received mental-health treatment from approximately May 2017 to December 2018 for diagnosed major depressive disorder-single episode, other specified anxiety disorders, cannabis abuse, and alcohol dependence in remission; under Guideline G that Applicant consumed alcohol at times to excess and intoxication, from age 20 to at least February 2020 (SOR ¶ 2.a) and that a licensed psychologist determined in February 2020 that Applicant's current and continued level of alcohol use could impact his judgment, reliability, and trustworthiness (SOR ¶ 2.b); under Guideline H that Applicant used marijuana from age 18 to at least February 2020 (SOR ¶ 3.a) and that he abused non-prescribed Ativan in January 2017 and was fired from his job after testing positive for the drug (SOR ¶ 3.b); and under Guideline F that, as of the issuance of the SOR on October 27, 2020, Applicant owed charged-off debt totaling \$24,444 on four accounts (SOR ¶¶ 4.a-4.d); a \$406 collection debt (SOR ¶ 4.e); a mortgage debt of \$152,484 in foreclosure and \$25,239 past due (SOR ¶ 4.f); and a \$25 medical collection debt (SOR ¶ 4.g).

When Applicant responded to the SOR, he admitted all of the allegations except for the mortgage delinquency (SOR ¶ 4.f) and possibly the medical collection debt, which he had been unable to confirm. He indicated that the mortgage loan was refinanced in

October 2020 and is no longer in foreclosure proceedings. Regarding the Guideline I concern, he explained that he was currently in mental-health treatment. As for the Guideline G concerns, Applicant stated that he tries to drink responsibly when he consumes alcohol, and that if he had continued drinking at the same level as February 2020, it “could have an impact on [his] judgment and reliability, but not concerning classified information.” He acknowledged that he has used cannabis from about age 18 to the present, at a level and frequency that has fluctuated over the years, but he explained that he is now a medical marijuana patient. Applicant admitted that he had taken the Ativan to relax while being unaware of the possible consequences for his non-prescribed use. About his financial issues, Applicant explained that he and his spouse needed to settle their mortgage foreclosure situation before resolving other debts and that they are seeking legal advice as to the best course of action to settle their debts. He cited several factors (loss of employment, an unplanned pregnancy, a knee injury, his underemployment, his spouse’s car accident and her drug rehabilitation) as causes of his financial difficulties.

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is 45 years old, married, and the father of two sons, ages six and eight. A high school graduate, he completed Class A commercial driver training in December 2014 and took a five-week design/drafting course in 2018. He was employed full time by a defense contractor as a mechanical draftsman learner for about 11 days from April 2018 to May 2018, when he was laid off for lack of a security clearance while his application for security clearance eligibility was pending. He indicates that he is subject to rehire if his clearance eligibility is adjudicated favorably. (GE 1; Tr. 25.)

Substance Use and Psychological Issues

Applicant started drinking alcohol in high school and using cannabis shortly after graduating from high school at age 18. (Tr. 37.) He has used marijuana with varying frequency since then, including four times a week from ages 18 to 38. (GE 3.) However, there were also times of abstention from marijuana for as long as three or four years. (Tr. 39.) Applicant purchased marijuana for his own consumption, at times on a weekly basis. (Tr. 39.) He has continued to use marijuana, albeit now with a medical marijuana card, and to use alcohol. He engaged in heavy drinking from ages 20 to 25, although there have been times when he has abstained, and also times of responsible consumption. (GE 3; Tr. 47.)

In June 1993, after Applicant consumed 12 beers to intoxication while socializing with friends, he and his friends stole some items from unlocked vehicles and garages. Felony burglary and larceny charges were filed against Applicant but eventually not prosecuted. After Applicant consumed ten beers at a bar in October 1997, he was involved in an altercation with two men. He paid a fine for misdemeanor assault. In July 1999, Applicant was arrested for possession of hallucinogenic mushrooms (psilocybin). The drug had been left in his vehicle by a friend in May 1999. Applicant admitted illegal

possession, and in December 1999, he was sentenced to six months in jail (deferred), one year of probation, and a \$500 fine. (GEs 1-2, 6.) Applicant refrained from any marijuana use while he was on probation because he was subject to random urinalysis. A year or two later, he resumed using marijuana with a new roommate, whom Applicant indicates was “a regular smoker.” (Tr. 38.)

Applicant was employed as a dealer and table games supervisor at a casino from October 1996 to March 2001 and again from September 2001 to March 2014 when he was terminated following a few incidents involving co-workers or patrons. In September 2015, Applicant began working as a commercial truck driver. Applicant refrained from using any marijuana for close to three years while in training for, and then working as a truck driver. (Tr. 41-42.) He was terminated from that job in January 2017 after he failed a random urinalysis. He tested positive for taking Ativan that his spouse gave him from her prescription. He had been experiencing considerable anxiety related to some accidents on the job, and neither he nor his spouse realized it was a banned substance. (GEs 1, 6.) He had used the Ativan as a sleep aid approximately three times in December 2016. (Tr. 46.)

Depressed and experiencing anxiety to the point where his spouse was concerned about his mental health, Applicant voluntarily received outpatient mental-health treatment from late May 2017 to mid-December 2018 for diagnosed major depressive disorder-single episode, other specified anxiety disorders, cannabis abuse-uncomplicated, and alcohol dependence, in remission. He reported on intake that he drank about six beers per week and was “self-medicating” with marijuana four times a week. (Tr. 40.) He was prescribed Zoloft and advised to cease using marijuana and to continue sobriety with respect to his alcohol use. The clinical records do not expressly indicate that he was told to cease using alcohol. However, Applicant testified that the psychiatrist told him to stop drinking. (Tr. 60.) During a session on June 7, 2017, Applicant complained of anger management issues and worry about finances. He reported medical marijuana use to treat a physical condition and occasional alcohol use. At each session, the psychiatrist advised him to decrease and stop using marijuana, and discussed “the risks of marijuana with mood worsening [in the] long run.” With adjustments to his Zoloft and the additions of Trazodone and Buspar to his medication regimen, Applicant’s mental health improved. During a session on September 18, 2017, Applicant reported that he had decreased his marijuana use in that he had smoked the drug only once in the last month. He declined therapy beyond an initial session because of his finances. (GEs 2-3, 6.) Applicant asserts that he reduced his consumption of alcohol “quite a bit” while in treatment with the psychiatrist because he was taking psychiatric medications. (Tr. 35.)

Applicant refrained from marijuana use while looking for work and then in training to work for a defense contractor because he did not want it to be held against him by a future employer. He passed a hair follicle test administered for employment with the defense contractor. (Tr. 43-44.) On March 29, 2018, Applicant completed a Questionnaire for National Security Positions (SF 86) to work for a defense contractor. He disclosed that he had been in treatment since approximately June 2017 for “borderline personality disorder” and that he had been arrested in 1993, 1997, and 1999. In response to an

inquiry concerning any illegal drug use in the last seven years, Applicant reported that he had failed a random drug test after taking some of his spouse's anti-anxiety medication three or four times in a week in December 2016 while struggling with major anxiety because he had recently witnessed a suicide by a man stepping out in front of a truck ahead of him, and, on another occasion, he had locked the brakes on his truck when cut off by another vehicle on the highway. He denied any other illegal use of a drug in the previous seven years. (GE 1.)

On June 12, 2018, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). He explained that he had received medication management for "borderline personality disorder" with symptoms of depression and anxiety for the past year, and that he had attended one session of therapy at the recommendation of his psychiatrist. (GE 6.) The session occurred on June 8, 2017. (GE 2.) There is no indication that Applicant told the OPM investigator about his marijuana use or that he was asked about any use of cannabis. Applicant explained to the investigator that he elected not to pursue therapy because he felt better on his medications, and it was expensive. Applicant discussed his use of his spouse's Ativan in December 2016, and his positive drug screen that led to the loss of his commercial driver's license and employment as a truck driver. (GE 6.)

Applicant stopped seeing the psychiatrist after December 2018. He elected instead to have his psychiatric medications prescribed and monitored by his primary care physician. His primary care physician suggested that he apply for the state's medical marijuana program to address some physical ailments. Applicant obtained his medical marijuana card in August 2019, which allows him to purchase up to 2½ ounces of marijuana per month from state-authorized dispensaries. (Tr. 35, 40, 66-67.) His physician has to annually recertify his need for marijuana. (Tr. 40.) Applicant is in his second year of the program. (Tr. 66.)

During the course of its background investigation, the OPM obtained the records of Applicant's treatment with his former psychiatrist. In early 2020, the DCSA CAF referred Applicant for a psychological evaluation to a licensed psychologist because of his history of alcohol and cannabis use and his mental-health treatment reflected in the psychiatrist's records. During the February 29, 2020 psychological evaluation, Applicant reported using both tetrahydrocannabinol (THC) and CBD for medical issues under his state's medical marijuana program, about three times a day, as prescribed by his primary care physician "as needed for any symptoms that may arise." (Tr. 43.) Applicant's judgment and insight were assessed as adequate, and he appeared relaxed for his interview. He reported no current issues with symptoms of depression, euphoria, mood disturbance, or anxiety, but he indicated that he had stress because of some life circumstances, including involving his spouse, who, after totaling his car in an accident in August 2019, checked herself into a rehabilitation program. He reported that he was working for his uncle at the time, but had to quit to care for his sons. (GE 2.)

During the evaluation, Applicant admitted that he had consumed alcohol on a daily basis before his spouse went into rehabilitation. His uncle kept beer at work, and he would

sometimes drink with his uncle at the end of the work day. Applicant would then drink at home with his wife, a half to a full pint of liquor per night. Following his spouse's return from her rehabilitation program in mid-November 2019, Applicant limited his alcohol consumption to once every two weeks, and generally beer rather than hard liquor. He refrained from drinking in his spouse's presence, but a friend would share a six-pack with him when his spouse was out of the house. Applicant reported having consumed three beers and two nips of liquor with his brother the night before his February 2020 evaluation, but no drinking for 1½ weeks before that. He stated that had abstained for two or three weeks before his use 1½ weeks prior to his evaluation. He explained that he did not find it difficult to maintain that level of consumption. As for his use of medical marijuana, Applicant indicated he generally smoked or vaped three times a day: first thing in the morning, after work, and before going to sleep at night. The psychologist opined that Applicant did not currently meet the diagnostic criteria for a diagnosable mental-health condition and that the symptoms that led him to seek psychiatric treatment in 2017 were sufficiently managed with medication. The alcohol dependence diagnosis of 2017 appeared to be based on Applicant's previous heavy drinking when he was in his 20s. The psychologist nonetheless expressed some concern about Applicant's recent daily drinking. Although noting the absence of any alcohol-related consequences and the reduction in Applicant's drinking since November 2019, the psychologist opined that "his continued use of alcohol does not reflect good judgment in light of his history of alcohol dependence, and this could be detrimental to his judgment, reliability or trustworthiness concerning classified information." As for Applicant's use of medical marijuana, "while permitted under the laws of his state, [it] is exclusionary for granting a security clearance under federal guidelines." (GE 2.)

In May 2020, Applicant's brother passed away. Applicant "got into a bad habit of drinking." (Tr. 61-62.) After drinking heavily that summer, including up to 12 to 15 drinks of beer and a few nips over the course of a day while on vacation, he realized that he had to get his drinking under control. (Tr. 62-63.) Applicant began weekly treatment with a licensed professional mental-health counselor in November 2020. (AE D; tr. 37.) In May 2021, the counselor opined that Applicant had not previously truly addressed his trauma and mood-related history before now, and that his reported "co-existing issues such as alcohol use, excessive spending of money, etc. are all symptoms of this." She acknowledged the DOD's concerns "regarding the issues outlined that could impact [Applicant's] judgment, impulses, reliability, and truthfulness regarding classified information," and indicated that he has started the process, "with a genuine intent," to work on improving his situation. She noted that some of the DOD's concerns had improved, although she did not elaborate in that regard about which issues. She did not provide a diagnosis but addressed his current need for time in therapy and medication management to address his issues, including his substance-use issues. (AE D.)

As of his May 2021 hearing, Applicant's psychiatric medications were being monitored by a nurse practitioner. (Tr. 33-34.) Applicant testified that he has worked on his drinking, and that he does not consume as much alcohol as he had in the past. (Tr. 31.) About his current consumption, Applicant testified:

I might have about five drinks a week. My wife doesn't allow me to have drinks at the house here very much. But every once in awhile, I'll meet a friend out and we'll have a beer or two. Maybe a beer and a nip – fishing or something. (Tr. 48.)

As to why he continues to consume alcohol despite his previous diagnosis of alcohol dependence – in remission and being advised to stop drinking by a psychiatrist, Applicant responded, "Don't know. I've always drank just casually. I've never seen it as being a problem if I only have two or three drinks. It's when I get carried away." (Tr. 60-61.) Sometime in April 2021, Applicant consumed nine or ten beers while socializing with friends in his own home. He admits that he "definitely was over the legal limit at some point during the day." (Tr. 64-65.) Applicant believes that he can control his drinking. (Tr. 65.)

Applicant continues to consume cannabis three times a day as a medical marijuana card holder in his state. (Tr. 31, 42-43.) He knows that the defense contractor has a drug policy. However, he also testified that he knows that there are people working for the defense contractor with their medical marijuana certifications. (Tr. 44-45.) He believes that "there's a strong possibility" that he can work for the defense contractor and still use marijuana as long as he has a medical marijuana card. (Tr. 44.) However, he also testified that if it is not possible to use marijuana and work for a defense contractor, he could stop using and attempt to find alternative treatment for his medical conditions. (Tr. 44.) He would like to continue his medical marijuana use. (Tr. 45.)

Finances

Applicant opened some credit card accounts early on in his marriage to establish credit so that he and his spouse could buy a house. (Tr. 49.) He and his spouse did not always spend wisely, and she did not return to work immediately after the birth of their first child in March 2013 due to postpartum depression. (Tr. 49.) After losing his job at the casino in March 2014, Applicant was unemployed until September 2015. He spent the time caring for his then infant son, and he collected unemployment compensation during that time. (GE 6.) From October 2014 until December 2014, Applicant attended and completed a commercial driver training course. (GEs 1-2, 6.) For about 12 to 18 months, he and his spouse were "treading water," but it got to the point where they relied on credit to pay their utility bills and purchase groceries. (Tr. 49.) His spouse spent irresponsibly, and their financial situation "got out of control." (Tr. 50.)

After testing positive for Ativan in December 2016, Applicant lost his commercial driver's license. He struggled to find suitable employment, and was unemployed from January 2017 to May 2017. During that time, he attended school for bartending. His spouse took \$20,000 from her retirement funds to support their family. (GE 6.) Applicant worked as a traffic controller for a security company from May 2017 to July 2017, when he was laid off for lack of work. In August 2017, Applicant began working at a pizza restaurant. After only three or four days on the job, he injured his knee. He filed a worker's

compensation claim, and he elected not to return to that job. (GEs 1, 6.) He received a settlement of \$9,500 for his injury. (GE 6.)

Applicant was unemployed from August 2017 to January 2018. He held temporary employment for a short time in January 2018, but he was terminated when he was observed wearing a knee brace to work. Through his state, he enrolled in a manufacturing pipeline design program at a community college in March 2018. Two weeks into his training, he received a conditional offer of employment from a defense contractor, pending his successful completion of the training, which ended on March 28, 2018. (GEs 1, 6.)

At the end of his training, Applicant completed his March 29, 2018 SF 86. He reported some financial difficulties involving routine accounts: \$1,500 in hospital bills in collection; unresolved credit-card delinquencies of \$9,946 (SOR ¶ 4.a), \$2,731 (not alleged), \$3,526 (SOR ¶ 4.d), \$4,690 (SOR ¶ 4.c), and \$5,815 (SOR ¶ 4.b); his mortgage that was past due for \$4,016 (allegation withdrawn); and an \$876 energy bill (not alleged). Applicant explained that he fell behind on the accounts because he was injured at work in August 2017, lost his job, and was unable to get new work. He was appealing denial of a worker's compensation claim. He added that he was working with his mortgage lender to remodify his loan and arrange a payment plan to bring his loan current, and that he was in a program with the energy company to spread out his debt so that he could bring his account up to date. He explained that he was presently unable to make any payments on the credit-card delinquencies. (GE 1.)

Applicant started working for the defense contractor as a mechanical draftsman learner in April 2018. He was laid off only weeks later because of a lack of security clearance. He understands he would return to work for the employer if his clearance is adjudicated favorably. (GE 6.) Applicant went to work for a family member. (Tr. 50.)

As of May 2018, Applicant's credit report showed that he owed credit-card charged off balance of \$9,945, \$4,689, \$6,284, and \$3,536, and a medical collection debt of \$25. (GE 4.) When asked about his finances during his June 12, 2018 interview with the OPM investigator, Applicant stated that he had used credit cards to support himself and his family, and he stopped making even the monthly minimum payments on some of the accounts (a \$1,500 hospital debt and those accounts in SOR ¶¶ 4.a-4.e). He explained that he tried to establish repayment plans with the creditors in November 2017 but none would agree on a payment that he could afford. He volunteered that the creditor in SOR ¶ 4.a had filed for judgment in February 2018, and that he had yet to receive a court date. Additionally, he and his spouse had consulted with a bankruptcy attorney in January 2018 to resolve their debt. They had not filed a bankruptcy petition because he did not want a bankruptcy to negatively impact his chance of being rehired by the defense contractor. He expressed an intention is to file after he is rehired. He added that he had rectified his mortgage issues and was making timely payments following a loan modification. Applicant did not recognize the \$25 medical collection debt (SOR ¶ 4.g) on his credit record. He stated that he had taken an online credit-counseling course and attended a mortgage crisis job training program to improve his financial situation. (GE 6.)

In October 2019, Applicant lost his job with his uncle because he had to stay at home to care for his two young children. His spouse gave him two days notice before she left for a rehabilitation program located out of state. Applicant was unemployed until late January 2020, when he began working for a manufacturing machine company. (Tr. 50, 56.) He left that job in May 2020, when his brother died. Applicant was emotionally distraught and unable to work without compromising his and others' safety. (Tr. 57.) As of May 2020, the credit bureaus were reporting no progress on Applicant resolving the credit-card delinquencies in SOR ¶¶ 4.a-4.d. Additionally, a \$406 satellite television debt was in collection (SOR ¶ 4.e), and his mortgage loan was in foreclosure. (GE 5.) Applicant and his spouse were approved for a mortgage loan modification in October 2020, which lowered their monthly payment from \$985 to \$886. (GE 4.) They have made timely mortgage payments since then. (AEs A-C, E.) However, as of May 2021, the debts in SOR ¶¶ 4.a and 4.c-4.e were still on his credit record as unpaid. (AEs A-C.) The creditor for the debt in SOR ¶ 4.a had offered to settle Applicant's balance for \$2,000. Applicant has not been able to reach the creditor about the proposed settlement. (Tr. 26.) There is no evidence of record showing that the debt in SOR ¶ 4.b has been resolved, although it is no longer listed on his credit report.

Applicant has been unemployed for a year as of his May 2021 hearing. (Tr. 26, 51.) He has been collecting unemployment compensation for the last year. It is currently the minimum of \$200 per week plus the \$300 stimulus. (Tr. 57-58.) His spouse has been employed as a dealer at a casino since 2006, with the exception of a brief furlough and time off after the birth of their children. (Tr. 57.) She works four days a week and her earnings fluctuate depending on tips. She averages about \$25 to \$35 per hour in tips, and brings home about \$850 per week. (Tr. 51, 59.) He and his spouse have "just under \$10,000 in [their] savings account." (Tr. 26, 52.) Applicant has had some credit counseling because he and his spouse are contemplating filing for bankruptcy. He would like to gain stable employment so he can negotiate with his creditors and bring his accounts current. His spouse is looking into a loan from her 401(k) to address some of the debts. (Tr. 55.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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 overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 to obtain 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline I: Psychological Conditions

The security concerns about psychological conditions are set forth in AG ¶ 27:

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g. clinical psychologist or psychiatrist) employed by, or acceptable and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline and an opinion, including prognosis, should be sought. No negative inference concerning the standards in this guideline may be raised solely on the basis of mental health counseling.

Applicant experienced depression and anxiety that was exacerbated after he witnessed a suicide on the highway and was involved in an accident while driving a dump truck. His symptoms led him to seek treatment, consisting of medication management, from a psychiatrist in May 2017. The psychiatrist diagnosed him, in part, with major

depression disorder-single episode, and other specified anxiety disorders, and prescribed Zoloft (SOR ¶ 1.a). Over the course of the clinical relationship, medications were added and adjustments made to improve his symptoms. In February 2020, a licensed clinical psychologist, who evaluated Applicant for the DOD, opined that Applicant did not currently meet the clinical criteria for a mental-health condition that could negatively impact his judgment, reliability, and trustworthiness as his mental health was being successfully managed by his psychotropic medications. However, there is evidence that Applicant's mental health was negatively impacted by his brother's untimely death in May 2020. According to her May 2021 letter, Applicant's current therapist does not feel that Applicant's trauma and mood-related history had been truly addressed previously. She did not provide a diagnosis, but acknowledged that he needs "the time and opportunity to put in the work needed through therapy [and] medication compliance" to improve his situation.

Psychological issues unrelated to gambling can be disqualifying under one or more of the following adjudicative criteria:

(a) behavior that casts doubt on an individual's judgment, stability, reliability, or trustworthiness, not covered under any other guideline and that may indicate an emotional, mental, or personality condition, including, but not limited to, irresponsible, violent, self-harm, suicidal, paranoid, manipulative, impulsive, chronic lying, deceitful, exploitative, or bizarre behaviors;

(b) an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness;

(c) voluntary or involuntary inpatient hospitalization; and

(d) failure to follow a prescribed treatment plan related to a diagnosed psychological/psychiatric condition that may impair judgment, stability, reliability, or trustworthiness, including but not limited to, failure to take prescribed medication or failure to attend required counseling sessions.

There is no indication that Applicant has engaged in any specific behavior that in and of itself is symptomatic of his diagnosed depression or anxiety. Before seeking medication management from a psychiatrist in May 2017, his condition was debilitating enough that he was unable to work. Even so, the evidence falls short of establishing AG ¶ 28(a). While depression and anxiety are conditions that could impair his judgment, reliability, and trustworthiness, AG ¶ 28(b) is also not clearly established. The licensed psychologist who evaluated Applicant in February 2020 did not have concerns for his mental health at that time. Applicant's current therapist indicates that Applicant exercised questionable judgment and decision making in the past, and that he needs more time to work on his issues. That said, her comment that "there are various issues that he needs continued work on," is too ambiguous to satisfy AG ¶ 28(b). AG ¶ 28(c) has not been shown to apply. Regarding AG ¶ 28(d), there is no evidence that Applicant has failed to

take prescribed medications or missed any counseling sessions. His co-existing substance abuse of marijuana and alcohol was contrary to medical advice; however those issues are best addressed under Guidelines H and G, respectively.

AG ¶ 29 provides for possible mitigation under the following conditions:

(a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;

(b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;

(c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;

(d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; and

(e) there is no indication of a current problem.

Applicant is credited with voluntarily seeking and pursuing treatment for his mental health from May 2017 to December 2018 with the psychiatrist, continuing his medication management under the care of his primary physician since then, and pursuing therapy since November 2020. AG ¶ 29(a) has some applicability in that his mental health issues are controllable with treatment. By all accounts, he appears to be in compliance with his current therapy, although in that regard, some issues persist. He did not follow the advice of his psychiatrist to remain sober from alcohol and marijuana while under that clinician's care.

With respect to AG ¶¶ 29(b) and 29(c), it can reasonably be concluded that as far as the psychological issues are concerned, the psychologist who evaluated Applicant for the DOD in February 2020 gave him a good prognosis. To the extent that mood issues resurfaced on the death of his brother, Applicant is currently in counseling to address his ongoing mood and substance abuse issues. The salient issue is whether his therapist has given him a favorable prognosis. She indicated that Applicant is working towards improving his situation with a genuine intent. It is unclear to what extent his current mental health poses a problem for his judgment, reliability, and trustworthiness. What can be said is that Applicant knows he has an issue and is taking positive steps to address his behavioral health. He has a favorable track record of taking his prescribed medications.

To the extent that psychological conditions persist, they are currently of less concern than his substance abuse for the reasons that follow.

Guideline G: Alcohol Consumption

The security concern about alcohol consumption is set forth in AG ¶ 21:

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.

Applicant began drinking alcohol in high school. His drinking led to his arrest after he stole some items from garages when he was age 17. When he was 21, he was involved in an altercation while intoxicated, and paid a fine for the assault. These incidents were not alleged, but they show the negative impact alcohol had on Applicant from an early age. He admits that he drank heavily from ages 20 to 25.

Available counseling records indicate that, when he sought psychiatric treatment in May 2017, he reported that he was drinking alcohol only occasionally, about six beers per week. His then treating psychiatrist diagnosed him with alcohol dependence in remission. Applicant asserts that he reduced his consumption of alcohol while in treatment with the psychiatrist, and there is no evidence of any alcohol-related impairment during that time. However, he also acknowledges that he did not follow his psychiatrist's advice to cease drinking. After he lost his job as a truck driver following a positive test for Ativan in December 2016, Applicant struggled to find stable employment. He worked for a defense contractor for about 11 days in April 2018 when he was laid off because of a lack of security clearance. He then worked for his uncle from about the summer of 2018 until October 2019. His uncle kept beer at work, and Applicant would sometimes drink with his uncle at the end of the work day. Applicant also drank at home with his wife, a half to a full pint of liquor per night, until his spouse went into rehabilitation in October 2019. Applicant had to quit his work to care for his children, and he reduced his consumption to beer once every two weeks. On occasion, he shared a six-pack of beer with a friend. While noting the substantial reduction in Applicant's drinking over the previous three months, the psychologist who evaluated Applicant for the DOD in February 2020 had some concerns about Applicant's alcohol consumption because of his recent pattern of consuming liquor nightly before his spouse entered her rehabilitation program. After the untimely death of his brother in May 2020, Applicant resorted to alcohol to deal with the trauma. He drank heavily that summer, including up to 12 to 15 drinks of beer one day while on vacation.

AG ¶ 22 lists seven potentially disqualifying conditions in cases of excessive alcohol consumption, as follows:

(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;

(b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, drinking on the job, or jeopardizing the welfare and safety of others, regardless of whether the individual is diagnosed with alcohol use disorder;

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder;

(d) diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder;

(e) the failure to follow treatment advice once diagnosed;

(f) alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder; and

(g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

Applicant's alcohol-related arrests in June 1993 and October 1997 are the type of incidents contemplated within AG ¶ 22(a), but they were not alleged and so cannot be considered in disqualification. AG ¶ 22(a) does not apply. There is no evidence of any alcohol-related impairment at work that could possibly trigger AG ¶ 22(b). AG ¶ 22(c) is established. Applicant engaged in binge if not habitual consumption of alcohol when he was ages 20 to 25; again in 2019 when he drank up to a pint of liquor per night with his spouse before she entered rehabilitation; and during the summer of 2020 following the death of his brother (SOR ¶ 2.a). Binge consumption of alcohol is not defined in the AGs or the Directive. The National Institute on Alcohol Abuse and Alcoholism defines binge drinking as a pattern of drinking that brings a person's blood-alcohol concentration to 0.08 grams percent or above. This typically happens when men consume five or more drinks in about two hours. For further information see <https://www.cdc.gov/alcohol/fact-sheets/binge-drinking.htm>.

Regarding AG ¶ 22(d), the Government did not seek to disqualify Applicant under Guideline G on the basis of the psychiatrist's diagnosis of alcohol dependence-in remission, presumably because the duly-qualified psychologist, who evaluated Applicant in February 2020, felt that Applicant had moderated his consumption to where he no longer met the criteria for a dependency diagnosis. Even so, the psychologist had concerns about Applicant's judgment because of his heavy drinking during the summer of 2010 (SOR ¶ 2.b). When evaluating the risk presented by his ongoing consumption of alcohol, I cannot ignore that Applicant had previously been diagnosed with alcohol

dependency in remission or that his continued drinking, at times to excess, was contrary to medical advice to remain sober.

Under ¶ E3.1.15 of the Directive, Applicant has the burden to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. AG ¶ 23 provides for mitigation under the following conditions:

- (a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the individual acknowledges his or her 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 demonstrate a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Applicant asserts that he currently consumes about five drinks of alcohol a week, usually beer. Applicant may be drinking less now than he did during the summer of 2020 when he "got into a bad habit of drinking" following the death of his brother, but he admitted consuming nine or ten beers while socializing with friends within weeks of his May 2021 hearing. Whether or not that qualifies as binge consumption, it is problematic in light of his alcohol abuse history and alcohol dependency diagnosis. While his alcohol use disorder was in remission as of May 2017, and a licensed clinical psychologist felt that Applicant had moderated his consumption as of February 2020 to no longer warrant a dependency diagnosis, the psychologist had some concerns about his recent daily drinking such that she felt his alcohol consumption could negatively impact his judgment, reliability, and trustworthiness. The evidence bears out her concerns about his drinking in that Applicant relapsed into heavy drinking in the summer of 2020. AG ¶ 23(a) cannot reasonably apply.

Applicant is credited under AG ¶¶ 23(b) and 23(c) with pursuing counseling since November 2020 to address his alcohol consumption. However, it is too soon to conclude that his maladaptive alcohol use is safely in the past. He does not believe that his present consumption of alcohol is a problem. His current counselor indicates that, while some of the issues of security concern have improved, he "needs the time and opportunity to put in the work needed through therapy, medication compliance, taking care of his physical

health, addressing substance issues . . . to foster further improvement.” To the extent that her assessment is positive about his voluntary decision to enter therapy to address the concerns, it is not clear that Applicant has demonstrated a “clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations,” or that he is making “satisfactory progress.” None of the mitigating conditions fully applies.

Guideline H: Drug Involvement and Substance Misuse

The security concerns about drug involvement and substance misuse are set forth 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.

In addition to the above matters, I note that the Director of National Intelligence (DNI) issued an October 25, 2014 memorandum concerning adherence to federal laws prohibiting marijuana use. In doing so, the DNI emphasized three things. First, no state can authorize violations of federal law, including violations of the Controlled Substances Act, which identifies marijuana as a Schedule I controlled drug. Second, changes to state laws (and the laws of the District of Columbia) concerning marijuana use, even use that is for medical reasons under state law, do not alter the national security adjudicative guidelines. And third, a person’s disregard of federal law concerning the use, sale, or manufacture of marijuana remains relevant when making eligibility decisions for sensitive national security positions. Federal agencies are statutorily prohibited from granting or renewing national security eligibility for any covered individual who is an unlawful user of a controlled substance or is an addict.

Applicant has used marijuana for most of the last 26 or 27 years (SOR ¶ 3.a). He started using marijuana at age 18 and used it about four times a week for the next 20 years. He abstained from marijuana while in training and then working as a commercial truck driver, but after he lost his job for testing positive for Ativan, which he took from his spouse’s prescription on about three occasions in December 2016 (SOR ¶ 3.b), he turned to marijuana to self-medicate and used the drug four times per week. On his intake for psychiatric care in May 2017, he was diagnosed with cannabis use-uncomplicated. He continued to use marijuana despite being advised to stop by his then treating psychiatrist. Applicant reported a decrease in the frequency of his marijuana use in September 2017, but since acquiring his marijuana card in about August 2019, he has used marijuana with some regularity. As of February 2020, he was using marijuana three times a day.

Five potentially disqualifying conditions under AG ¶ 25 apply. They are:

- (a) any substance misuse (see above definition);
- (b) testing positive for an illegal drug;
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;
- (d) diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of substance use disorder;
- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

Applicant's use of marijuana since 1994 and his use of non-prescribed Ativan in December 2016 amply establish the security concerns under AG ¶¶ 25(a) and 25(c). Applicant admits that he purchased marijuana illegally before he received his medical marijuana card. Although his illegal purchases were not alleged, AG ¶ 25(c) applies because of his illegal possession. AG ¶ 25(b) applies because he tested positive for Ativan after illegally using the drug in December 2016. Regarding AG ¶ 25(g), Applicant intends to continue to use marijuana to alleviate his physical ailments. He believes that he can use marijuana for medical purposes and work for a defense contractor because he knows some individuals with medical marijuana cards currently employed by the defense contractor. An individual licensed to use marijuana for medical purposes may be able to work for a defense contractor. They may hold a job that does not require a security clearance. However, they cannot access classified material or hold a DOD security clearance and use marijuana, even if their use is legal under state law. Appendix B of the AGs provides that an individual who is an unlawful user of a controlled substance is statutorily prohibited from being granted security clearance eligibility. Applicant was using marijuana three times a day as of May 2021.

Applicant testified that he is willing to try alternative therapies to marijuana if he cannot use marijuana for medical purposes and work for the defense contractor. While I have no reason to doubt his sincerity in that regard, he has established no period of abstinence from which I could conclude that he can be counted on to abstain from marijuana use. He cannot reasonably satisfy the mitigating conditions under AG ¶ 26, which are as follows:

- (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 an individual's current reliability, trustworthiness, or good judgment;
- (b) the individual acknowledges his or 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 illegal drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility;

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and

(d) satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Marijuana has been a part of Applicant's lifestyle for the past two decades. He managed to abstain while working as a trucker, but relies heavily on the drug to mitigate physical ailments. He has not educated himself about the DOD policy and is seemingly willing to disregard federal law. At this juncture, little confidence can be placed in a promise to try alternative treatments if he is granted a clearance. His involvement with Ativan is not likely to reoccur because his psychiatric medications appear to be adequately managing his mental health issues. The same cannot be said for his marijuana use based on the record evidence. The drug involvement and substance misuse security concerns are not mitigated.

Guideline F: Financial Considerations

The security concerns about financial considerations are set forth 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. . . .

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.

As of the October 2020 SOR, Applicant owed \$24,444 in delinquent credit-card balances on four accounts (SOR ¶¶ 4.a-4.d), a \$406 past-due debt for satellite television service (SOR ¶ 4.e), and a \$25 medical debt in collection (SOR ¶ 4.g). Applicant did not recognize the \$25 medical collection debt when asked about it during his interview with the OPM investigator. The debt may have been overlooked, although it does not appear on his most recent credit report. Whether or not it is owed, it is of little current security concern because of the balance. Applicant can afford to pay it if it is owed. The undisputed credit-card debts were charged off (SOR ¶¶ 4.a-4.d), and the \$406 debt was in collection. These delinquent accounts establish two disqualifying conditions: AG ¶¶ 19(a), "inability to satisfy debts," and 19(c), "a history of not meeting financial obligations."

Applicant has the burden of establishing sufficient mitigation to overcome the financial concerns raised by his failure to meet his financial obligations according to their repayment terms. One or more of the following conditions under AG ¶ 20 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 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; 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.

AG ¶ 20(a) cannot reasonably apply because the delinquencies are ongoing. The Appeal Board has repeatedly held that unresolved debts constitute a continuing course of conduct. See *e.g.*, ISCR Case No. 17-03146 at 2 (App. Bd. Jul. 31, 2018) (citing ISCR Case No. 15-08779 at 3 (App. Bd. Nov. 3, 2017)). Applicant admits that, as of May 2021, that he has made no progress toward resolving the debts.

Applicant has a case for some mitigation under AG ¶ 20(b). He fell behind on some financial accounts after he was injured at work and lost his job in August 2017. With the exceptions of some temporary work in January 2018 and 11 days of employment with the defense contractor in April 2018, he was unemployed from August 2017 to the summer of 2018, when he began working for his uncle. He had to quit working in October 2019 when his spouse went into rehabilitation, and was unemployed until late January 2020, when he began working for a manufacturing machine company. He left that job in May 2020 because of mental health and substance abuse issues triggered by the trauma of his brother's unforeseen death. However, Applicant has not been without some income over the past year in that he has collected an unemployment benefit of \$200 per week plus the \$300 stimulus.

Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside of his control, I have to consider whether he has since acted in a reasonable manner to address his financial difficulties. See ISCR Case No. 05-11366 at 4, n. 9 (App. Bd. Jan. 23, 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 of sound financial judgment is whether Applicant maintained contact with his creditors and attempted to negotiate partial payments to keep debts current or settle his debts. Applicant's evidence falls short in that regard. He and his spouse have about \$10,000 in savings, and yet, they have not addressed any of his delinquent debts. He and his spouse consulted with a bankruptcy attorney in January 2018 but have yet to file a petition because Applicant believes would negatively impact his chance of being rehired by the defense contractor. AG ¶ 20(b) does not mitigate his continued disregard of the debts of concern to the DOD.

Neither AG ¶ 20(c) nor AG ¶ 20(d) has been fully established. While the allegation pertaining to his delinquent mortgage loan has been withdrawn as a concern, Applicant is credited with obtaining a loan modification of his home loan to remove it from foreclosure status. He has had some financial counseling because of the contemplated bankruptcy filing, but it would be premature to find the financial considerations mitigated without some proof of progress on resolving the delinquencies. The Appeal Board has

held that an applicant must demonstrate “a plan for debt payment, accompanied by concomitant conduct, that is, conduct that evidences a serious intent to resolve the debts.” See ADP Case No, 17-00263 at 4 (App. Bd. Dec. 19, 2018), citing, e.g., ISCR Case No. 16-03889 at 5 (App. Bd. Aug. 9, 2018). Applicant’s plan to file for bankruptcy is not enough to trigger AG ¶ 20(d) in mitigation. The Appeal Board has previously explained what constitutes a good-faith effort to repay creditors or otherwise resolve debts, as follows:

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 hosing 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 related 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)).

A bankruptcy discharge under Chapter 7 or a track record of timely bankruptcy payments under a Chapter 13 plan could trigger AG ¶ 20(c), in that an applicant would no longer have legal liability for repayment of those debts subject to a Chapter 7 discharge, and a track record of Chapter 13 payments could well indicate that the debts are being resolved. However, it would be premature to apply AG ¶ 20(c) without proof of a discharge or compliance with a Chapter 13 plan. Moreover, a discharge in bankruptcy may give a person a financial fresh start, but it does not substitute for evidence of a demonstrated track record of financial reform, a track record that is necessary to satisfy Applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue access to classified information for him. AG ¶ 20(e) is relevant only to the extent that he may not owe the \$25 medical collection debt in SOR ¶ 4.g. The financial considerations security concerns are not adequately mitigated.

Whole-Person Concept

In assessing the whole person, the administrative judge must consider the totality of Applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). Those factors are:

- (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.

The analyses under Guidelines I, G, H, and F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

The security clearance adjudication involves evaluating an applicant's judgment, reliability, and trustworthiness in light of the security guidelines in the Directive. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). With respect to Guideline I, no negative inference is drawn because of his mental-health counseling, which is clearly a positive step in addressing the issues of security concern. At the same time, neither the traumatic events he has experienced nor his physical ailments excuse his ongoing violations of federal drug laws. Applicant has been forthright about his mental health struggles and substance abuse, but his trustworthiness in that regard is not enough to overcome the significant security concerns in several adjudicative issue areas. It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). Based on the evidence of record, it is not clearly consistent with the interests of national security to grant security clearance eligibility for Applicant.

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 I:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	Against Applicant
Paragraph 3, Guideline H:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Subparagraph 3.b:	For Applicant
Paragraph 4, Guideline F:	AGAINST APPLICANT
Subparagraphs 4.a-4.e:	Against Applicant
Subparagraph 4.f:	Withdrawn
Subparagraph 4.g:	For Applicant

Conclusion

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

Elizabeth M. Matchinski
Administrative Judge