DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 20-03161
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Daniel O'Reilley, Esq., Department Counsel
For Applicant: Marc T. Napolitana, Esq.

03/11/2022

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Decision

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LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for access to classified information. There is sufficient evidence to explain and mitigate his history of financial problems. Likewise, he presented sufficient evidence of reform to mitigate his history of drug involvement and substance misuse, which consisted primarily of smoking marijuana that is now in the past. Accordingly, this case is for Applicant.

Statement of the Case

Applicant completed and submitted a Standard Form (SF) 86, Questionnaire for National Security Positions, the official form used for personnel security investigations, in December 2018. (Exhibit 1) The automated version of the SF 86 is the e-QIP. More plainly, the SF 86 is commonly known as a security clearance application.

Applicant provided additional information during a 2019-2020 background investigation. (Exhibit 2) Thereafter, on March 8, 2021, after reviewing the available information, the DoD Consolidated Adjudications Facility, Fort Meade, Maryland, sent

Applicant a statement of reasons (SOR) explaining it was unable to find that it was clearly consistent with the national interest to grant him eligibility for access to classified information. The SOR is similar in form and purpose to a complaint, which is the initial pleading that starts a civil action; in some states this pleading is known as a petition; and in criminal law it is a formal charge accusing a person of a criminal offense. Here, the SOR detailed the factual reasons for the action under the security guideline known as Guideline F for financial considerations and Guideline H for drug involvement and substance misuse.

Applicant answered the SOR admitting the factual allegations, provided a four-page memorandum in explanation, and provided several supporting documents appended to his answer. The various appendices were subsequently admitted at the hearing as Exhibit B. In early July 2021, Applicant retained counsel and requested an in-person hearing. Department Counsel indicated they were ready to proceed on July 6, 2021. Shortly thereafter, the case was received in the Washington Hearing Office. With the assistance of counsel, Applicant filed a supplemental response or answer to the SOR on November 24, 2021. It consists of an 18-page memorandum and numerous documentary matters (at Tabs A-I) in support of Applicant's case. The entire document was admitted at the hearing as Exhibit A.

The case was assigned to me on November 29, 2021. The hearing took place as scheduled on January 25, 2022. Applicant appeared with counsel. Both Department Counsel and Applicant offered documentary exhibits, which were admitted as Government Exhibits 1-5 and Applicant Exhibits A-C. Applicant was called as a witness and was subject to cross-examination by Department Counsel.

Exhibit C was admitted pending receipt after the hearing. As things went, Applicant timely submitted several post-hearing documents and they are admitted without objection as follows: (1) Exhibit C—Petition filed with the Army Board for Correction of Military Records, dated September 8, 2021; (2) Exhibit D—university transcript; (3) Exhibit E—record of various payments made to Defense Finance Accounting Service (DFAS); (4) Exhibit F—debt and claims management updates and DFAS ticket; (5) Exhibit G—credit history information from Credit Karma (TransUnion and Equifax); (6) Exhibit H—credit scores from Credit Karma (TransUnion and Equifax); and (7) Exhibit I—proof of payment of $1,009 on a credit card account.

The record closed on February 28, 2021. I spoke by telephone with Applicant's Counsel on March 1, 2021, and he indicated that Applicant had no additional matters to submit.

Findings of Fact

Applicant is a 29-year-old employee who is seeking eligibility for access to classified information for his job as an engineer for a large company in the defense industry. He interviewed for the job in September 2018, received an offer in November 2018, and began work in January 2019. (Tr. 21-23) This is the first time he has applied for a security clearance. He began in an entry-level or associate position and has since

been promoted two levels ahead of schedule to a field sales support systems engineer senior. (Exhibit A at Tab C) It is a new positon he started in July 2021 in which he helps manage projects for work in support of a significant military aircraft program. He enjoys his work and desires to continue in his current employment. (Tr. 23) He has never married and has no children, although he has a long-term serious girlfriend he has dated since about December 2019. (Tr. 24; Exhibit A at Tab D) His girlfriend works for the same company and she also holds a security clearance.

Applicant's educational background includes a bachelor's degree in industrial and operations engineering awarded in December 2018 from a well-regarded state university. (Exhibit D) He received university honors and was named to the dean's list in both April 2017 and April 2018. He started at the state university via an Army ROTC scholarship in September 2009, but had a five-year gap from January 2011 until January 2016, when he returned to his studies at the university. He was in the ROTC program from September 2009 until formally discharged in August 2011. He withdrew from all classes in January 2011, and his academic standing was subsequently changed to mandatory leave. (Exhibit D)

A. Applicant's history of financial problems

It is this initial period at the university—more than a decade ago now—that resulted in the financial issues in this case. The SOR alleges a history of financial problems consisting of the following: (1) Applicant filed a Chapter 7 bankruptcy case in about October 2014, and he received a discharge in about January 2015; and (2) he is indebted to the Defense Department for an account placed for collection in the amount of about $34,333. He disclosed both matters in his security clearance application. (Exhibit 1 at Section 26) Understanding how these two matters came about requires a bit more discussion of Applicant's initial period at the university. What follows below is based primarily on information provided by Applicant. (Exhibit A at Tab C and Exhibit C)

Applicant was required to take an official Army Physical Fitness Test (APFT) as part of the ROTC program during the Winter Semester 2010. (Tr. 26-28) He passed the first two events but failed the third when he became ill during the two-mile run. He was scheduled to retake the APFT the following week but did not due to an injury incurred during an intramural sporting event. He was eventually informed by the ROTC program that he could retake the APFT during the Fall Semester 2010, which he did successfully. In about October or November 2010, Applicant learned that he would not receive the ROTC scholarship money, and that he was responsible for about $18,000 in costs. (Exhibit 2) Applicant believes this occurred because he did not pass the APFT during Winter Semester 2010.

This was overwhelming news for the then youthful Applicant. He described the loss of the ROTC scholarship sent him into a downward spiral. He shut down, did not tell his parents, and stopped attending classes. He finished Fall Semester 2010 with a GPA of 0.914, which resulted in loss of the ROTC scholarship. (Exhibit D; Tr. 58-59) He received both the bill for Fall Semester 2010 and Winter Semester 2011 in January 2011 and promptly withdrew from all classes for Winter Semester 2011 and withdrew

from the university to prevent financial liability for the additional semester. His official discharge from the Army ROTC program followed August 2011. (Exhibit B at Appendix FB1) Shortly thereafter, he was billed by the Defense Department for his first two semesters (Fall 2009 and Winter 2010) in the ROTC program. The bill was to recoup monies paid for educational expenses paid by the ROTC program. He proposed to repay the bill via active duty enlisted service, but was denied. The financial ramifications of these circumstances were a total indebtedness of about $80,000 consisting of $20,000 in student loans, $25,000 owed to the university, and $35,000 owed to the Defense Department. (Tr. 28) He described the indebtedness as "insurmountable." (Tr. 31)

After withdrawing from the university in January 2011, Applicant began working a series of jobs to support himself. (Tr. 30; Exhibit 1 at Section 13a) The jobs were part-time or full-time and were entry-level jobs in the fields of health care/insurance, construction, and hospitality (waiter and bartender). He relied on the jobs to pay for his living expenses and attempted to repay the university and the Defense Department, although it was difficult to make much progress with his low wages. In 2013, his total income was $23,287; in 2014, his total income was $17,603; and in 2015, his total income was $23,976. (Exhibit B at Appendix FA4) He lost his job working at the bar in about September 2013 when the bar flooded, which was his only source of income at the time. (Tr. 33-34) He returned to working at the bar in about April 2014, having picked up odd jobs here and there in the meantime.

Shortly thereafter, Applicant decided to seek relief in bankruptcy to resolve the debt owed to the university. He did so because he was unable to make any real progress paying down the indebtedness given his low wages, and he wanted to move on with his life, return to the university, and have a career. (Tr. 32-33) He filed a Chapter 7 bankruptcy petition in October 2014, and received a discharge in January 2015. The bankruptcy court records show his indebtedness was limited to five debts listed on Schedule F (for unsecured nonpriority claims) as follows: (1) a water-utility debt for $86.50; (2) a government overpayment (the DFAS debt) for $35,413; (3) a debt to the university for $25,821; (4) a student loan for $3,051; and (5) a student loan for $2,165. (Exhibit 3 and Exhibit B at Appendix FA1 and Appendix FA2) The January 2015 bankruptcy discharge provided relief for the water utility bill (presumably) and the university debt, as the other three were not dischargeable in bankruptcy.

The university acknowledged the bankruptcy discharge and informed Applicant they had written off his student account debts for tuition and housing. (Exhibit B at Appendix FA3) Subsequently in April 2015, Applicant was able to finish making payment in full for the two student loans listed in the Chapter 7 bankruptcy case. (Exhibit B at Appendix FA 5)

The DFAS debt appears in a January 2019 credit report as a $34,333 collection account. (Exhibit 5) It does not appear in a February 2021 credit report, which reflects the Chapter 7 bankruptcy case but no past-due or collection accounts. (Exhibit 4) Likewise, the DFAS debt does not appear in more recent credit reports, none of which

reflect past-due or collection accounts. (Exhibit G) Given the age of the DFAS debt, it is likely that it aged off the more recent credit reports.

Applicant made irregular, sporadic payments on the DFAS debt. Based on records he provided, he had a monthly payment of about $1,012 on an account balance of $36,376 as of April 2012; he made payments of $50, $50, $100, $100, and $200 during 2012-2014; his account was deemed delinquent by July 2013; his account was in default by August 2013; and the account balance was $36,207 in November 2013. (Exhibit E)

In March 2014, the Treasury Department informed Applicant that an income tax refund for $742 had been applied to the DFAS debt. (Exhibit B at Appendix FB2) In June 2014, in response to a garnishment action, Applicant requested a hardship hearing with the Treasury Department concerning the debt. (Exhibit B at Appendix FB3) The outcome of the hearing was successful, in part, as Treasury determined that his wages could not be garnished at that time, but the debt was otherwise fully enforceable in the amount of $46,037 as of July 2014. (Exhibit B at Appendix FB4) A few months later in August 2015, Applicant signed a promissory note (for student deferment on education debts only) with DFAS. (Exhibit B at Appendix FB5) Subsequently, Applicant has made payment on the debt via interception of his annual income tax refund but has otherwise not provided proof of payments. At some point DFAS closed the collection account, and the debt went into the Treasury's collection system via the offset program, which collects past-due (delinquent) debts (e.g., child-support payments) that people owe to state and federal agencies.

Applicant is now seeking relief from the DFAS debt. (Tr. 35-36) Specifically, on September 8, 2021, he filed a petition with the U.S. Army Board for Correction of Military Records (ABCMR) seeking a waiver of recoupment of the educational debt incurred via his ROTC scholarship or, in the alternative, reduction of the educational debt to a substantial degree. (Exhibit C) The basis of his dispute is that the ROTC officials did not provide him correct or complete information regarding an option to withdraw from the ROTC contract within the first year without financial liability or consequences (the so-called one-and-done rule). (Tr. 36; Exhibit C) The delay in filing a petition with the ABCMR is due to Applicant's ignorance as a layman, and he became aware of ABCMR process when he retained counsel. (Tr. 35-36) The petition was pending before the ABCMR at the time of the hearing in this case and it is expected to take some time before the petition is acted upon.

Applicant's current financial situation is now much improved. His entry-level salary with his current employer was $60,000 and it has since increased to $93,000. (Tr. 67) He's taken steps to educate himself in the field of personal finance and completed online financial education or counseling courses. (Tr. 37-38; Exhibit A at Tab G) He used a motorcycle when he relocated for his current job, which allowed him to delay buying a new car. (Tr. 40-41) He does not carry a balance on credit card accounts. (Exhibits G and I) He repaid two student loans before he returned to the university, and he is current with his student loans now. As of March 2021, he had made all required payments for 114 consecutive months. (Exhibit B at Appendix FA9) The most recent

credit reports reflect no derogatory information other than the bankruptcy. (Exhibits 5 and G) Post-bankruptcy, he has steadily increased his credit scores and now has scores of 730 and 734, which are considered good. (Exhibit H)

B. Applicant's history of drug involvement and substance misuse

Applicant disclosed a history of drug involvement and substance misuse in his security clearance application. (Exhibit 1 at Section 23) He did so because it was the right thing to do. (Tr. 75) He provided additional information during his background investigation. (Exhibit 2) His primary drug of choice was marijuana, which he used from about July 2008 to about September 2018. He was introduced to marijuana through a friend in high school. He denied using marijuana at the university when he was in the ROTC program. (Tr. 60-61) He explained that before returning to the university, he worked in a college bar where people would frequently decompress after work, which involved using marijuana multiple times per week. After he returned to the university in January 2016, he used marijuana almost every day in the evenings as a way to deal with stress, as a sleep aid, and in social settings too. He described himself as a regular user of marijuana during 2016, 2017, and for about half of 2018. (Tr. 50, 68-69) His involvement with marijuana included purchasing it about once a month, but he never sold it. (Tr. 69)

In addition to marijuana, Applicant disclosed using cocaine and Ecstasy, and he reported misusing (without a prescription) the medications Adderall, Vyvanse, and Ritalin. (Exhibit 1) He estimated using cocaine about a half a dozen times from about March 2012 to May 2015. He described his cocaine use as sporadic. It occurred when he was offered cocaine by acquaintances, and he used it by "gumming it" as opposed to snorting it. He never purchased cocaine and he never sought it out. He used Ecstasy once in 2015 when he attended a music festival. He used it with a friend who wanted to use it at the time. He misused the medications during 2010-2018. He used them as a study aid to help him complete school work and study for exams.

Applicant's last instance of illegal drug involvement occurred in September 2018. He used marijuana during that month, but stopped after notified that he had a job interview with his current employer. (Tr. 42-43) He explained that he quickly realized the potential of the prospective job and did not want to do anything to ruin or jeopardize it. He has never failed a drug test, including the pre-employment drug test he took for his current job. (Tr. 61, 77) He also expressed a good understanding of his employer's drug-free workplace policy, to include that it prohibits off-duty illegal drug use too. (Tr. 77-78) He self-referred for a substance-use-disorders evaluation in November 2021. The results were favorable as the evaluation concluded that he did not meet diagnostic criteria for any substance. (Exhibit A at Tab I)

Applicant noted that his girlfriend, who holds a security clearance, is wholly against marijuana use as well as illegal drug use in general. (Tr. 78) In addition, he has dissociated himself from negative influences, including illegal drugs. (Exhibit A at Tab C, ¶ 6) He also submitted a number of declarations from family, friends, and co-workers. The family members are two younger brothers, one of whom is an active duty Army

officer and the other is a student enrolled at a U.S. military academy. His supporters speak emphatically about his many favorable character traits and profess that previous drug involvement is a thing of the past.

Applicant intends to continue to refrain from illegal drug use or substance misuse of any kind. To that end, he executed a signed statement of intent wherein he promised not to illegally use any drugs, to include marijuana, in the future; and he further agreed that any such violation shall be grounds for automatic revocation of any security clearance. (Exhibit A at Tab H)

Law and Policies

This case is adjudicated under Executive Order (E.O.) 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.

It is well-established law that no one has a right to a security clearance.[1] As noted by the Supreme Court in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."[2] Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security. In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.[3] The Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.[4]

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.[5] Under the Directive, the parties have the following burdens: (1) Department Counsel has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted; (2) an applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven; and (3) an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.[6]

[1] *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

[2] 484 U.S. at 531.

[3] 484 U.S. at 531.

[4] ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

[5] ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

[6] Directive, Enclosure 3, ¶¶ E3.1.14 and E3.1.15

Discussion

Under Guideline F for financial considerations, the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness or financial problems or difficulties. The overall concern is set forth in AG ¶ 18 as follows:

> Failure or inability 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. . ..

The concern is broader than the possibility that a person might knowingly compromise classified or sensitive information to obtain money or something else of value. It encompasses concerns about a person's self-control, judgment, and other important qualities. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified or sensitive information.

In analyzing the facts of this case, I considered the following disqualifying conditions as most pertinent:

AG ¶ 19(a) inability to satisfy debts; and

AG ¶ 19(c) a history of not meeting financial obligations.

The evidence supports a conclusion that Applicant has a history of financial problems or difficulties that is sufficient to raise a security concern under Guideline F. The disqualifying conditions noted above apply.

Likewise, in analyzing the facts of this case, I considered the following mitigating conditions as most pertinent:

> AG ¶ 20(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 [person's] current reliability, trustworthiness, or good judgment;
>
> AG ¶ 20(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 act responsibly under the circumstances; and
>
> AG ¶ 20(e) the [person] 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.

The mitigating condition at AG ¶ 20(a) applies in Applicant's favor. His history of financial problems arose due to his participation in an Army ROTC program during 2009-2010 and subsequent disenrollment therefrom under circumstances that resulted in "insurmountable" debt, as characterized by Applicant. (Tr. 31) It no longer casts doubt on his current security suitability in light of the fact that Chapter 7 bankruptcy case occurred several years ago (2014-2015) and has not recurred. Applicant is also taking lawful, legitimate steps to dispute the DFAS debt. Moreover, Applicant has affirmatively demonstrated that recurrence is a low-probability event by returning to the university in 2016 and graduating in 2018, which did not result in similar financial problems.

The mitigating condition at AG ¶ 20(b) also applies. The conditions that resulted in Applicant's financial problems during 2009-2010 were largely beyond the control of the then youthful and inexperienced Applicant. He was unaware of the so-called one-and-done rule for ROTC cadets and therefore was unable to take advantage of it to avoid financial liability. Likewise, he has acted responsibly under the circumstances. First, after withdrawing from the university in January 2011, he had a series of low-wage jobs to support himself and used any extra money to repay debt (e.g., two student loans were paid off in 2015 and he made irregular payments on the DFAS debt). Second, payments were also made on the DFAS debt by interception of Applicant's annual federal income tax refund, which is not considered a purely voluntary payment. Still, Applicant deserves a bit of credit; after all, he earned the money that was intercepted. Third, he used a Chapter 7 bankruptcy to resolve a large debt owed to the university after concluding he had no other viable options given his low wages. This provided him with a "fresh start" as contemplated by bankruptcy law, although the DFAS debt was not dischargeable. Fourth, he then put himself in a position to return to the university in January 2016, continued working part-time jobs, and earned an engineering degree in December 2018. Given these circumstances, I conclude Applicant acted responsibly.

The mitigating condition at AG ¶ 20(e) applies to the outstanding DFAS debt. As detailed in the petition to the ABCMR, Applicant is disputing the debt, or seeking a substantial reduction of the debt, because he claims he should have been permitted to withdraw from the ROTC program within the first year without financial consequences, but he was not informed of that fact. (Exhibit C). I make no findings or conclusions concerning the procedural correctness or merits of his ABCMR petition, which are beyond the scope of this case. But his petition is sufficient establish a reasonable basis to dispute the DFAS debt within the meaning of AG ¶ 20(e).

Overall, I was impressed by Applicant's grit and persistence to overcome a difficult situation. Some people would have simply given up. Applicant buckled down and worked low-wage jobs, paid what he was able to pay, used the lawful process of bankruptcy to resolve one debt, and then returned to the same university where his financial problems began. He earned an engineering degree allowing him to transition from low-wage jobs to the white-collar workforce. It is also apparent that Applicant is conducting his current financial affairs responsibly. Note, long-standing caselaw from

the Appeal Board is consistent and clear that a security clearance case is not a debt-collection procedure. And this case is an example of why that is so. Overall, there is sufficient evidence to explain and mitigate his history of financial problems. Accordingly, the matters under Guideline F are decided for Applicant.

Under Guideline H for drug involvement and substance misuse, the concern as set forth in AG ¶ 24 is that:

> [t]he illegal use of controlled substances, to include the misuse of prescriptions 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. . . .

In addition to the above matters, I note that the Director of National Intelligence (DNI), acting in his capacity as the Security Executive Agent (SecEA), 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 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.

The DNI recently updated or clarified guidance for marijuana-related issues in security clearance adjudications via a December 21, 2021 memorandum, which states in pertinent part the following:

> [Federal] agencies are instructed that prior recreational marijuana use by an individual may be relevant to adjudications but not determinative. The SecEA has provided direction in [the adjudicative guidelines] to agencies that requires them to use a "whole-person concept." This requires adjudicators to carefully weigh a number of variables in an individual's life to determine whether that individual's behavior raises a security concern, if at all, and whether that concern has been mitigated such that the individual may now receive a favorable adjudicative determination. Relevant mitigations include, but are not limited to, frequency of use and whether the individual can demonstrate that future use is unlikely to recur, including by signing an attestation or other such appropriate mitigation. Additionally, in light of the long-standing federal law and policy prohibiting illegal drug use while occupying a sensitive position or holding a security clearance, agencies are encouraged to advise prospective national security workforce employees that they should refrain from any future marijuana use upon initiation of the

national security vetting process, which commences once the individual signs the certification contained in the Standard Form 86 (SF 86), Questionnaire for National Security Positions.[7]

In analyzing the facts of this case, I considered the following disqualifying and mitigating conditions as most pertinent:

AG ¶ 25(a) any substance misuse;

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

AG ¶ 26(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

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 of revocation of national security eligibility.

I have considered the totality of Applicant's drug involvement and substance misuse as outlined in the findings of fact, including his last known marijuana usage in September 2018. The date is significant because it preceded his entry into the defense-industry workforce, and it preceded his application for a security clearance, in which he disclosed his drug involvement. Had his drug involvement continued after submitting his December 2018 SF 86, I probably would have decided the Guideline H matters differently.

Addressing the individual drugs, Applicant misused the prescription medications as a study aid and that misuse ended in about April 2018. His illegal use of Ecstasy occurred once in 2015, which is more than five years ago. His sporadic use of cocaine was limited to about a half a dozen times during 2012-2015, which was also more than five years ago. His illegal use of marijuana was prolonged over about a decade until it ended in September 2018. He was a frequent or regular user of marijuana during 2016, 2017, and for about half of 2018. He also purchased marijuana. I view his prolonged

[7] SecEA Clarifying Guidance Concerning Marijuana for Agencies Conducting Adjudications of Persons Proposed for Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position, dated December 21, 2021, at page 2.

involvement with marijuana as the most serious matter. The disqualifying conditions noted above apply.

Although Applicant's past use of marijuana and other drug misconduct raise a security concern, these matters should be put in perspective. The Appeal Board has made multiple favorable decisions in cases involving applicants with long-term or significant histories of marijuana involvement. For example, in 1998, the Appeal Board affirmed a favorable decision for a 41-year-old applicant with a 24-year history of marijuana use, who had used marijuana during his military service, and who had used marijuana after being granted a security clearance.[8] Second, in 1999, the Appeal Board affirmed a favorable decision for a 37-year-old applicant who started using marijuana at a party in 1996, and used marijuana one to two times daily for three months in 1998.[9] Third, again in 1999, the Appeal Board affirmed a favorable decision for a 28-year-old applicant who smoked marijuana nine months before the record closed, who smoked marijuana over a ten-year-period, and who smoked marijuana while working as a security professional in violation of his employer's policy.[10] And fourth, in 2004, the Appeal Board reversed an unfavorable decision against a 50-year-old applicant with a 28-year history (1996 to December 1997) of regular, although occasional, marijuana use culminating in his arrest for drug-related criminal conduct.[11] Applicant's marijuana involvement and other drug misconduct, while a 20-something student or working in the same college town, does not rise to the same level or degree of seriousness as noted in the four cases above.

The DNI's clarified guidance is also informative, as the facts and circumstances here appear to align with that guidance. To review, Applicant smoked marijuana for a prolonged period; he was a frequent or regular marijuana user for two to three years; he stopped using marijuana in September 2018 upon notification of a job interview in the defense industry; he disclosed his marijuana use and other drug involvement in his security clearance application; he cooperated during the security-clearance process; and, significantly, he has abstained from marijuana use or other drug misconduct for more than three years (September 2018-January 2022).

Consistent with the DNI's guidance, Applicant refrained from any future marijuana use upon initiation of the national security vetting process, which commences once the individual signs the certification contained in the SF 86. Actually, his drug misconduct ceased a couple of months before he signed the SF 86. He is now working

[8] ISCR Case No. 97-0803 (App. Bd. Jun. 19, 1998) (*See* administrative judge's decision for underlying facts and circumstances).

[9] ISCR Case No. 99-0675 (App. Bd. Nov. 16, 1999) (*See* administrative judge's decision for underlying facts and circumstances).

[10] ISCR Case No. 98-0611 (App. Bd. Nov. 1, 1999) (*See* administrative judge's decision and remand decision for underlying facts and circumstances).

[11] ISCR Case No. 02-08032 (App. Bd. May 14, 2004) (*See* administrative judge's decision for underlying facts and circumstances).

in a different environment from the college-town environment where his drug misconduct occurred, he no longer associates with drug users, he has a long-term girlfriend who has a security clearance, and she is opposed to marijuana. He also signed an appropriate attestation of non-use. Overall, Applicant persuaded me that he will continue to refrain from marijuana use and any other substance misuse and that his drug misconduct is safely in the past. The mitigating conditions noted above apply. Accordingly, the matters under Guideline H are decided for Applicant.

Following *Egan* and the clearly consistent standard, I have no doubts or concerns about Applicant's reliability, trustworthiness, good judgment, and ability to protect classified or sensitive information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also considered the whole-person concept. I conclude that he has met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

The formal findings on the SOR allegations are:

Paragraph 1, Guideline F:	For Applicant
Subparagraphs 1.a – 1.b:	For Applicant
Paragraph 2, Guideline H:	For Applicant
Subparagraphs 2.a – 2.f:	For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for access to classified information. National security eligibility is granted.

Michael H. Leonard
Administrative Judge