



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 21-01452
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: John C. Lynch, Esq., Department Counsel  
For Applicant: *Pro se*

03/01/2022

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant’s marijuana use between February 2017 and May 2019 is mitigated by the passage of time and no intention of future illegal drug involvement. Concerns about his financial judgment raised by two defaulted vehicle loans, which he co-signed for family members, are not mitigated. Clearance eligibility is denied.

**Statement of the Case**

On August 6, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F, financial considerations, and Guideline H, drug involvement and substance misuse. The SOR explained why the 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 responded to the SOR allegations on August 12, 2021, and requested a decision on the written record in lieu of a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On October 29, 2021, the Government submitted a File of Relevant Material (FORM) consisting of a statement of the Government's position and six documents pre-marked as Item 1 through Item 6. The SOR and Applicant's SOR response were included as Item 1 and Item 2, respectively. On November 1, 2021, DOHA forwarded a copy of the FORM to Applicant and instructed him that any response was due within 30 days of receipt. Applicant received the FORM on November 15, 2021, and he submitted a timely response to which the Government did not object.

On February 2, 2022, the case was assigned to me to determine whether it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant. I received the case file and assignment on February 11, 2022. Applicant's FORM response was accepted in evidence as an exhibit (AE A).

### **Findings of Fact**

The SOR alleges under Guideline F that, as of August 6, 2021, Applicant was indebted on charged-off automobile loans of \$17,144 (SOR ¶ 1.a) and \$10,547 (SOR ¶ 1.b), and on a collection debt of \$846 (SOR ¶ 1.c). Under Guideline H, Applicant is alleged to have used marijuana with varying frequency from about February 2017 to at least April 2019 (SOR ¶ 2.a); to have purchased marijuana on various occasions from 2017 to December 2018 (SOR ¶ 2.b); and to have been charged with driver in possession of marijuana in April 2019 (SOR ¶ 2.c). (Item 1.)

When Applicant answered the SOR, he admitted the three debts, but stated that they "have all since been closed and removed." He explained that he had co-signed on vehicle loans for his father (SOR ¶ 1.a) and younger brother (SOR ¶ 1.b). Neither his father, who became unemployed, nor his brother, who had been in an accident, could maintain the payments. Applicant acknowledged the collections debt (SOR ¶ 1.c) had been on his credit report, but he did not recognize it. Applicant acknowledged that he had used marijuana to relax in the past before he realized it was not helping to realize his goal of improving his life. (Item 2.) After considering Items 1 through 6, and Applicant's FORM response (AE A), I make the following findings of fact:

Applicant is 32 years old and unmarried. He has no children. Applicant's parents came to the United States from Mexico before Applicant and his two brothers, ages 33 and 30, were born. Applicant lives with his parents in their home and pays rent for his room. Applicant graduated from high school in June 2007. In March 2013, he began working full time for an investment company. While maintaining that job, he began part-time college studies in February 2016. Two years into his nursing studies, he switched his focus and entered an aerospace fabrication program, which he completed in the spring of 2020. In

August 2020, he was offered employment as a composites bond technician with a defense contractor contingent on him obtaining a security clearance. (Item 3.)

Applicant completed a Questionnaire for National Security Positions (SF 86) on August 15, 2020, to initiate a background investigation for initial security clearance eligibility for him. On his SF 86, he indicated an intention to return to college “shortly” to complete his associate’s and bachelor’s degrees. (Item 3.) Applicant apparently resumed his studies shortly after he completed his SF 86 because he gave his college email address as contact information on his August 21, 2020 response to the SOR. (Item 2.)

## **Financial**

On his August 2020 SF 86, Applicant listed two charged-off vehicle loans with balances of \$17,144 (SOR ¶ 1.a) and \$10,547 (SOR ¶ 1.b). Applicant co-signed on the respective loans on May 22, 2015, for his father, and on May 25, 2015, for his younger brother. (Items 3-5.) He explained on his SF 86 that his brother had an accident and then could not afford to pay for the damages, and that his father lost his job and could not maintain the payments on his loan. Regarding efforts to address these debts, Applicant related that he had taken no action toward resolving the loan for his brother’s vehicle, and he did not know the full details of what occurred. He added that his brother had spoken to the dealer and “plans on making it right.” Applicant stated that his father assured him that he would begin repaying his loan when he is in a better financial position. (Item 3.)

A check of Applicant’s credit on September 5, 2020, reflected that Applicant had been 180 days past due previously on his three of his four federal student loans. The loans were in deferment with an aggregate balance of \$12,731. A fourth federal student loan of \$1,750 was also deferred. However, Applicant had not made his first monthly payment of \$44 on a \$126 personal loan obtained in July 2002. Applicant was making payments according to terms on a cell phone debt of \$363. Four small personal loans of \$95, \$328, \$120, and \$333 had been paid off according to account terms. A car loan that Applicant obtained in February 2012 for \$16,356 had been paid off in April 2018, but after he had redeemed the vehicle following a repossession. The vehicle loans listed on his SF 86 were obtained for \$18,369 (SOR ¶ 1.a) and \$17,523 (SOR ¶ 1.b) and charged off to profit and loss in July 2020. Additionally, a collection entity was reporting an unpaid \$846 debt assigned in October 2016 (SOR ¶ 1.c).

During a September 16, 2020 personal subject interview (PSI) with an authorized investigator for the Office of Personnel Management (OPM), Applicant explained that his father was currently unemployed “due to COVID.” Applicant denied any responsibility for the \$10,547 charged-off loan balance for his brother’s vehicle and stated that his brother was working with the dealership to resolve the debt. He stated that the account may have gone two to three months past due. As for the loan co-signed for his father, Applicant asserted that his father caught up on his payments, and the account was in good standing. He denied any other past-due accounts in the last seven years. When confronted with the adverse information on his credit record, Applicant responded that he was unaware why the loan co-signed for his father was still showing as past due. He added that, if required,

he would work with the dealership to make a payment arrangement within the next couple of months. Applicant did not recognize the \$846 collection debt, but surmised the debt may stem from him missing the payment date for a ticket received in May 2013 for having a headlight out. He claimed to have paid the ticket late, although he could not recall the payment date. He disputed the debt if, in fact, it was for the ticket. As for his three student loans that were previously delinquent, Applicant stated that the accounts went two months past due but were deferred until he completed his schooling. Regarding the paid off car loan for the vehicle redeemed after repossession, Applicant stated that he fell behind a couple of months in his payments, but he was able to pay the balance and keep his car. He attributed the debt issues to immaturity and stated that he should have known better than to co-sign on a vehicle loan. He explained that he was making more effort to keep his accounts in good standing. (Item 6.)

Applicant was given an opportunity to provide documentation regarding the financial delinquencies to the OPM investigator after his interview to substantiate his disputes with the information on his credit report. The OPM investigator received no documentation. (Item 6.)

As of July 26, 2021, Applicant's credit report from Equifax was showing no progress toward the vehicle loans that Applicant had co-signed. The loan for his father's car had been charged off for \$17,639 and was last paid in January 2016. It was reportedly past due for \$17,144. The loan for his brother had been charged off for \$10,547 due to nonpayment since September 2015, although the creditor was reporting a zero balance after being written off. Applicant's student loans were rated as "pays account as agreed." The collection debt (SOR ¶ 1.c) was not on Applicant's credit report. (Item 4.)

On August 12, 2021, in response to the SOR, Applicant stated that the three debts were "still active" as of his completion of his SF 86 and his PSI, "but have all since been closed or removed." He related about the co-signed loans that he had been "asked just to put up a pay stub and co-sign to make the loan process easier" to help his father and brother. However, his father was unable to make the payments due to a job loss, and his brother incurred several medical expenses from "getting into a terrible accident shortly after signing for the car." Applicant added that he had not had any issues with his credit since then. He stated that he had no comment as to the collection debt (SOR ¶ 1.c) inasmuch as he was unfamiliar with it and did not receive requested information about the debt from the creditor. He provided a then current screenshot from his Experian credit report showing that he had no collection accounts on his record and that both of the car loans had been closed, although the creditor in SOR ¶ 1.a was still reporting a balance of \$17,144 as of July 31, 2021. Applicant commented, "I am happy to say these debts are no longer an issue." (Item 2.)

Applicant provided no credit records in response to the FORM. In an undated statement received by DOHA in December 2021, Applicant explained that even after the car loans went into collections, he was unable to make a firm commitment to aid his father or brother as he had just resumed his schooling and was working part time earning "a little more than the minimum wage." He had his own car payment, rent, and other expenses that

left him unable rather than unwilling to make the car payments for his family members. He expressed that his finances would not be an issue going forward, as restoring his credit rating was a top priority. (AE A.)

## **Drug Involvement**

On his August 2020 SF 86, Applicant disclosed in response to police record inquiries an April 2019 charge of marijuana while operating a vehicle for which he was sentenced to traffic school and fined. He indicated the charge was a misdemeanor, although sheriff and court records in Item 6 indicate it was an infraction. He stated about the offense, "I was at the wrong place, at the wrong time and got a serious wake up call. It was a hard lesson learned and I no longer associate myself with that stuff." In response to an SF 86 inquiry into any illegal use of drugs or controlled substances in the last seven years, Applicant reported that he "only used marijuana," but that he smoked the drug "regularly" on his days off from work between February 2017 and May 2019. He denied any intention to use the drug in the future, explaining:

The last time I used marijuana it resulted in a traffic ticket and from then on I came to the realization that it just doesn't really do anything positive for me in any way. I used [marijuana] for a few years and it was ok but I no longer have any desire to use marijuana in any way. (Item 3.)

During his September 2020 PSI, Applicant explained about the marijuana charge that he went to a friend's house after work in April 2019, and while he was waiting outside, a sheriff's officer approached and asked him his purpose. Applicant consented to a search of his vehicle, and marijuana was found under the seat. Applicant admitted to the OPM investigator that he had used marijuana in the past, but that the marijuana found belonged to his cousin. Applicant had forgotten about the marijuana left in his vehicle by his cousin. Applicant was issued a citation for possession of less than an ounce of marijuana, even though he denied having used any marijuana that day. Applicant stated that he never had to appear in court and that all he needed to do was attend an online traffic school, which cost him \$657. As for his use of marijuana, Applicant explained that he obtained the marijuana that he used from that same cousin, and they smoked it together during Applicant's days off from work. The marijuana had a relaxing effect on him. Applicant denied any current association with anyone that uses any illegal drug, including marijuana, and any intention to use marijuana in the future. (Item 6.)

On July 23, 2021, Applicant responded to interrogatories from DOHA about his drug use. He responded negatively to a query about any use of marijuana or other product containing tetrahydrocannabinol (THC) since his September 2020 PSI, even if it was legal under state law. He answered "Yes" to a question concerning any purchase of marijuana or products containing THC since August 2013, and explained that he purchased marijuana "about once every 6-8 weeks from early to mid 2017 to late December 2018" from that same cousin with whom he had used marijuana. He denied any purchase of marijuana since late December 2018 and added that he had matured "a lot" since then and is no longer involved with marijuana in any way. He responded "No" to inquiries concerning

whether he currently possessed any marijuana, THC products, other illegal drugs, or drug paraphernalia; whether he lived with or associated with any person who uses any illegal drugs; whether he frequents places where he has reason to believe marijuana or THC products are being sold or used; and whether he had any drug counseling or treatment or participated in a support group such as Narcotics Anonymous. Applicant also indicated that he had not been drug tested. At DOHA's request, Applicant provided records showing that he had been cited for having marijuana in his possession while driving on April 5, 2019; that he had been convicted on October 1, 2019; and that he had completed court-ordered traffic school online on September 27, 2019. (Item 6.)

In his December 2021 response to the FORM, Applicant expressed deep regret for his marijuana use and a desire to move forward from the person he had been. He stated that marijuana had not been an issue for a few years and that he was open to regular drug testing if required. He added that he had learned from his past mistakes and was working on improving all aspects of his life.

### **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 *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline F: Financial Considerations

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

Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

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.

Guideline F security concerns are established when an individual fails to pay financial obligations according to terms. Applicant co-signed on two vehicle loans within three days in May 2015 because he wanted to help his father and brother, who apparently would not have qualified for the loans on their own. His brother stopped paying on the loan for his vehicle in September 2015 (SOR ¶ 1.b). His father made a last payment for his car

in January 2016 (SOR ¶ 1.a). As a co-signer, Applicant accepted legal contractual responsibility for repayment of the defaulted loans. During his PSI, he expressed his belief that he had no responsibility to repay the loan for his brother's car. However, if he was found responsible, he would work with the dealership to pay the debt. He now asserts that he wanted to make the loan payments for his family members but he could not afford to do so. Disqualifying conditions AG ¶¶ 19(a), "inability to satisfy debts," and 19(c), "a history of not meeting financial obligations," apply because of the defaulted auto loans.

Regarding the \$846 collection debt, Applicant did not recognize it when asked about it during his PSI, although he speculated that it may be for a traffic ticket paid late. He admitted the debt in response to the SOR, but then stated in response to the FORM that he had no success in attempting to verify the debt. The Appeal Board has held that adverse information from a credit report is normally sufficient to meet the substantial evidence standard to establish a debt. See ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015) (citing, e.g., ISCR Case No. 03-20327 at 3 (App. Bd. Oct. 26, 2006)). Applicant presented no documentation of any efforts to investigate or dispute that debt.

As of July 26, 2021, Equifax was no longer reporting it on Applicant's credit report. However, the Appeal Board noted in ISCR Case No. 14-03612 at 4 (App. Bd. Aug. 25, 2015) and reiterated in ISCR Case No. 26-01338 at 3 (App. Bd. Jul. 13, 2018) that the fact that a debt no longer appears on a credit report is not "meaningful, independent evidence as to the disposition of the debt." The Fair Credit Reporting Act requires removal of most negative financial items from a credit report seven years from the first date of delinquency or if they become no longer legally collectible because of a state statute of limitations, whichever is longer. See Title 15, U.S.C. § 1681c. Debts may also be dropped from a credit report upon dispute when the creditor believes the debt is not going to be paid or when the debt has been charged off. The lender in SOR ¶ 1.b writing off the \$10,534 balance and reporting a zero balance on Applicant's July 2021 credit report is a case in point. Debts may still have security significance if they are no longer legally collectible or have been dropped from a credit report, particularly if they resulted from financially irresponsible behavior or remain unaddressed without reasonable justification. Given the absence of any evidence showing the debt in SOR ¶ 1.c is not his legitimate obligation, AG ¶¶ 19(a) and 19(c) apply to that debt as well.

Applicant has the burdens of production and persuasion in establishing sufficient mitigation to overcome the financial concerns raised by the delinquent accounts. 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; and

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

AG ¶ 20(a) cannot reasonably apply in mitigation because of Applicant's ongoing disregard of the established delinquent debts. An applicant's ongoing, unpaid debts evidence a continuing course of conduct and are considered recent. 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 provided no documentation about his brother's accident or his father's unemployment. While these are the types of unforeseen circumstances that could trigger AG ¶ 20(b) in mitigation of the initial defaults, Applicant knowingly assumed legal liability for two car loans totaling some \$36,162 in May 2015. It is not clear that he could reasonably afford to repay them in the event his father and brother did not make their payments. Moreover, mitigating condition AG ¶ 20(b) requires that an individual take responsible steps toward resolving the debts. If his brother worked out a deal with the lender to relieve him and Applicant of their joint liability for repayment of the charged-off \$10,534 balance, it was incumbent on Applicant to provide proof of any such arrangement, and he did not do so. Regarding the loan co-signed for his father, Applicant stated during his September 2020 PSI that he would check with his father about the status of the debt and, if required, would work with the dealership on repayment arrangements. Applicant now asserts that he could not afford to repay the loans on his income. He resumed his schooling and worked part time earning little more than the minimum wage. Even so, he had an obligation to contact the creditors and attempt to negotiate repayment terms that he could afford. There is no evidence that he did so. He seemed to think that because the creditors had charged off the debts and were not actively pursuing him for the balances, they were "no longer an issue." AG ¶ 20(b) is not fully established.

Moreover, without any evidence by Applicant to resolve the debts in the SOR or alternatively seek some relief from the creditors as to his legal liability for repayment, such as removing him from the loans in SOR ¶¶ 1.a and 1.b, neither AG ¶ 20(c) nor AG ¶ 20(d) has any applicability. An applicant is not required to establish that he or she has paid off each debt in the SOR, or even that the first debts paid be those in the SOR. See ISCR Case No. 07-06482 (App. Bd. May 21, 2008). However, "an applicant must demonstrate a plan for debt repayment, accompanied by concomitant conduct, that is, conduct that evidences a serious intent to resolve the debts." See, e.g., ADP Case No. 17-00263 at 4 (App. Bd. Dec. 19, 2018).

The security clearance adjudication is not a proceeding aimed at collecting an applicant's personal debts. It is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness with regard to his fitness or suitability to handle classified information appropriately. See ISCR Case No. 09-92160 at 5 (App. Bd. June 21, 2010). Applicant asserts that restoring his credit is a priority for him, and his July 2021 credit report shows that he obtained deferments of his federal student loans, which had been seriously delinquent in the past. He was able to redeem his car following repossession and paid off his loan in April 2018. His September 2020 credit report reflects timely payments on several small installment loans. Nonetheless, ignoring debts until they drop from one's credit report or are no longer legally collectable is not sound financial judgment for security clearance purposes. Applicant did not adequately mitigate the financial considerations security concerns.

### **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 state where Applicant was born, raised, and educated legalized marijuana use, possession, and purchase of small amounts of cannabis by adults 21 years of age or older on November 8, 2016. However, marijuana remains a Schedule I controlled substance under federal law pursuant to Title 21, Section 812 of the United States Code. Schedule I drugs are those which have a high potential for abuse; have no currently accepted medical use in treatment in the United States; and lack accepted safety for use of the drug under medical supervision. Section 844 under Title 21 of the United States Code makes it unlawful for any person to knowingly or intentionally possess a controlled substance not obtained pursuant to a valid prescription. On October 25, 2014, the then Director of National Intelligence (DNI) issued guidance that changes to laws by some states and the District of Columbia to legalize or decriminalize the recreational use of marijuana do not alter existing federal law or the National Security Adjudicative Guidelines, and that an individual's disregard of federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations.

Applicant seemed to realize this as he listed his marijuana use from February 2017 to April 2019 on his SF 86. Although he reported on his SF 86 that he used marijuana until May 2019 that date is inconsistent with his explanation that his last use of marijuana resulted in a traffic ticket. His citation and traffic court records show he was cited on April 5, 2019. Applicant described his marijuana use as “regularly on [his] days off [from] work.” During his PSI, Applicant did not indicate any frequency as to his marijuana use other than it occurred with his cousin on his days off. In response to drug interrogatories, Applicant disclosed that he purchased marijuana about once every six weeks from early-to-mid 2017 until late December 2018 from the cousin with whom he used marijuana. He did not provide any details as to his expenditures for marijuana. Disqualifying conditions AG ¶ 25(a), “any substance misuse,” and 25(c), “illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia,” apply.

Applicant bears the burden of establishing that matters in mitigation apply. AG ¶ 26 provides for mitigation 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.

AG ¶ 26(a) has some applicability in mitigation. Applicant was not specific about his marijuana use other than that it was regular. It occurred too often to be reasonably characterized as infrequent. There is no “bright line” for determining when conduct is recent

for purposes of mitigation. See ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). Applicant stopped using marijuana about 18 months before he completed his SF 86 in August 2020. There is no evidence of any recurrence since then. As of the record closure in this case in December 2021, it was not recent. Neither AG ¶ 26(c) nor AG ¶ 26(d) was shown to apply in this case.

Regarding AG ¶ 26(b)(1), Applicant indicated during his September 2020 PSI and in response to drug interrogatories in July 2021 that he does not associate with anyone who uses marijuana, any THC products, or any other illegal drug. He did not clearly indicate that he no longer associates with the cousin with whom he used marijuana and from whom he purchased marijuana. AG ¶ 26(b)(1) has not been conclusively established.

AG ¶ 26(b)(3) applies in his favor, however. Applicant's candor about his marijuana involvement on his SF 86, during his PSI, and in response to drug interrogatories, allows me to accept as credible his repeated denials of any intention to use marijuana in the future. The driving while in possession of marijuana infraction is a credible reason why he would decide to stop using marijuana. While he has not executed a statement acknowledging that any future drug involvement would be grounds for revocation of national security eligibility, it is clear from his responses to the FORM and SOR that understands that any future marijuana use would be inconsistent with clearance eligibility. In response to the FORM, he expressed a willingness to undergo drug testing. Although his marijuana uses and purchases are not condoned, more than 2½ years have passed since Applicant last used marijuana. The drug involvement and substance misuse security concerns are mitigated by the passage of time with no intention to engage in illegal drug use in the future.

### **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 Guideline F and Guideline H are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant was only 25 years old when he co-signed on the two loans. His desire to assist his father and younger brother is a positive character trait. However, he knew that his brother was unable to make his car payments after his accident, which happened within months of the car's purchase. Applicant spent money on marijuana in 2017 and 2018 as the loan went unpaid. As of August 2020, Applicant was on notice that the DOD was concerned about the delinquencies that were on his credit report, and he has done nothing to resolve them as of December 2021. Applicant has yet to demonstrate that he can be counted on to exercise the judgment, reliability, and trustworthiness that must be expected from those persons granted access to classified information. 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 or continue 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 F:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraphs 2.a-2.c:	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.

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Elizabeth M. Matchinski  
Administrative Judge