



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



In the matter of:)
)
) ISCR Case No. 20-01146
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*
03/18/2022

Decision

HARVEY, Mark, Administrative Judge:

Applicant failed to mitigate security concerns under Guidelines F (financial considerations) and E (personal conduct). Eligibility for access to classified information is denied.

Statement of the Case

On April 18, 2018, Applicant completed and signed his Questionnaires for Investigations Processing or security clearance application (SCA). (Government Exhibit (GE) 1) On April 30, 2021, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guidelines F and E. (HE 2) On May 28, 2021, Applicant provided his response to the SOR, and he requested a hearing. (HE 3)

On August 10, 2021, Department Counsel was ready to proceed. On August 20, 2021, the case was assigned to me. On November 16, 2021, DOHA issued a notice of hearing, setting the hearing for January 10, 2022. (HE 1) His hearing was held as scheduled in the vicinity of Arlington, Virginia using the DOD Microsoft Teams video teleconference system. (*Id.*)

During the hearing, Department Counsel offered 16 exhibits, which were admitted without objection. (Tr. 14-18; GE 1-GE 16) Applicant did not offer any exhibits into evidence at his hearing. (Tr. 11-12)

On January 19, 2022, DOHA received a transcript of the hearing. Applicant provided four documents after his hearing, and they were admitted into evidence without objection. (Applicant Exhibit (AE) A-AE D) The record closed on February 18, 2022. (AE E)

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript.

Findings of Fact

In Applicant's SOR response, he admitted all of the SOR allegations. (HE 3) His admissions are accepted as findings of fact. Additional findings follow.

Applicant is a 43-year-old aviation maintenance technician, and he has worked for a government contractor for 13 years. (Tr. 6-7; GE 1) He has not held a security clearance in at least ten years. (Tr. 41) In 1996, he graduated from high school, and in 2007, he was awarded an associate's degree in computer science. (Tr. 6-7) He served in the Army from 1996 to 1999 and from 2001 to 2005. (Tr. 7) He was a private E-2 when he was discharged in 2005 with a general discharge under honorable conditions. (Tr. 7) He served in Operation Iraqi Freedom from 2003 to 2004. (Tr. 8) He was awarded an Army Commendation Medal for his service in Iraq. (Tr. 8; AE B) His military occupational specialty (MOS) was petroleum supply (92F). (Tr. 8, 21)

Applicant was married to his first wife from 2001 to 2008, and he married his current wife in 2009. (Tr. 25) His children or stepchildren are ages 10, 12, 13, 16, and 16. (Tr. 46)

Financial Considerations

Applicant said his financial problems were caused in 2008 by his divorce. In 2013, his financial problems were caused by his driving under the influence of alcohol offense (DUI) and his spouse's loss of her employment in 2014. (AE D)

SOR ¶ 1.a alleges and Applicant admitted that he filed bankruptcy under Chapter 7 of the U.S. Bankruptcy Code in March 2009, and about \$60,287 of his nonpriority unsecured debts were discharged in July 2009. (SOR response) Applicant was allocated all of the debts in his divorce, and he utilized bankruptcy for a fresh start. (Tr. 27)

SOR ¶¶ 1.b, 1.c, and 1.d allege and Applicant admitted that he had three charged-off debts for \$15,052, \$7,890, and \$7,593. (SOR response) SOR ¶¶ 1.e, 1.f, 1.g, 1.h, 1.i, 1.n, and 1.o allege and Applicant admitted that he had seven debts placed for collection for \$649, \$612, \$975, \$75, \$852, \$1,625, and \$736. (*Id.*) SOR ¶¶ 1.j, 1.k, 1.l, and 1.m allege and Applicant admitted that he had four delinquent medical debts for \$100, \$50, \$1,459, and \$100. (*Id.*)

SOR ¶ 1.p alleges and Applicant admitted that he fell behind on his mortgage payments between January and October 2014 due to his gambling habits. (SOR response; GE 1 at 43) Starting in January 2014, he was gambling twice a week, and each time he spent several hundred dollars. (Tr. 31; GE 2 at 7) On one or two occasions, he spent \$1,000 to \$3,000 at the casino. (Tr. 31; GE 2 at 7) He estimated that he spent about \$20,000 gambling. (GE 1 at 43; GE 2 at 8) He called a hotline for treatment of gambling addiction several times, and he has not gambled since 2014. (Tr. 37) According to his June 2, 2014 three bureau credit report, his mortgage balance was \$214,504; it was previously 180 days past due; and it was currently in pays as agreed status. (GE 14 at 3)

SOR ¶¶ 1.q, 1.r, and 1.s allege and Applicant admitted that he failed to timely file his federal and state income tax returns for tax years (TY) 2013, 2014, and 2015. (SOR response) At the time the SOR was issued, he owed federal income taxes for TYs 2013, 2014, and 2015. (*Id.*) However, during his March 15, 2019, Office of Personnel Management (OPM) interview, he said: (1) he had filed his tax returns for TYs 2013, 2014, and 2015 in 2017; (2) he paid the taxes for TYs 2014 and 2015; and (3) he owed \$4,500 for TY 2013. (GE 2 at 12) He said he did not timely file his tax returns because he owed taxes. (*Id.*)

At his hearing, Applicant said he filed his tax returns for TYs 2013, 2014, and 2015 in 2018 or 2019. (Tr. 42-43) Most of the delinquent taxes were paid in 2019, and the remainder of his taxes were paid in 2020. (Tr. 43-44) He said he filed all tax returns and paid all delinquent taxes. (Tr. 37)

Applicant's SOR alleges in ¶¶ 1.b through 1.o that he has 14 delinquent debts totaling \$37,768. At his hearing, he said in late 2020 or early 2021, he refinanced his house and received about \$100,000. (Tr. 42, 45) After his hearing, he said the refinancing was in June 2020. (AE D) He said the debts in SOR ¶¶ 1.e, 1.f through 1.i, 1.n, and 1.o were paid prior to refinancing his mortgage, and the remainder were paid after he refinanced his mortgage. (AE D) He said he had to pay his delinquent debts in order to receive the funds from the mortgage company. (*Id.*)

Applicant's August 10, 2021 Equifax credit report indicates he has a \$515,871 mortgage account opened March 3, 2021, with a scheduled monthly payment of \$2,099, and this mortgage is in "pays as agreed" status. (GE 16 at 3) He said that most of the \$100,000 was used to remodel the kitchen of his residence. (Tr. 42) He used some of the remainder to pay all of the SOR debts. (Tr. 38) His August 10, 2021 Equifax credit report shows the debt in SOR ¶ 1.b as a charged-off credit union account with first delinquency in July 2017 for \$15,552 with an actual payment of \$15,552, a charged-off amount of \$15,552, and a zero balance. (GE 16 at 5-6) It also shows two collection accounts: a

medical debt for \$155 and a telecommunications debt for \$480. (GE 16 at 1-2) It does not show any other delinquent debts or negative financial entries. Applicant said after his hearing that he paid the \$15,552 debt in SOR ¶ 1.b. (AE D)

Personal Conduct

SOR ¶ 2.a alleges and Applicant admitted that the Army Criminal Investigation Command (CID) titled Applicant in January 1999 for making a false official statement, false swearing, indecent acts, and sodomy. (SOR response) Titling is a legal and law enforcement determination that probable cause supports commission of these offenses. Applicant and eight other soldiers sexually assaulted an intoxicated 18-year-old female in a barracks room on a military installation. (Tr. 23; GE 4) Some of the soldiers sexually assaulted her while she was unconscious. (GE 4) Applicant denied his involvement in his first statement to the CID. (Tr. 23; GE 4) Applicant subsequently provided a statement admitting his role in the sexual conduct. (Tr. 23-24; GE 4) He asserted that the woman consented to his sexual contacts. (GE 2 at 5-6) Applicant's offenses were resolved under Article 15, Uniform Code of Military Justice (UCMJ). (Tr. 22) At his hearing, he said he did not remember the offenses on his Article 15. (Tr. 23) His nonjudicial punishment (NJP) included 45 days of extra duty and 45 days of restriction. (Tr. 22) The NJP record was not admitted into evidence.

SOR ¶ 2.b alleges and Applicant admitted he received an Other Than Honorable discharge from the Army in July 1999 based on the misconduct investigated by Army CID in January 1999. (Tr. 24; SOR response)

SOR ¶ 2.c alleges and Applicant admitted that he tested positive in November 2004 in a urinalysis test for the presence of the cocaine metabolite in his urine. (Tr. 24; SOR response) He said his spouse was heavily involved with cocaine, and he "got caught up in it." (Tr. 40) However, he said he only used cocaine once, and he was caught on the urinalysis test. (Tr. 40-41; GE 2 at 6-7) He denied that he used any illegal drugs in the previous 10 years. (Tr. 42) He received 45 days of extra duty, 45 days of restriction, and reduction from specialist (E-4) to private (E-2) at an NJP proceeding held under Article 15, UCMJ. (GE 2 at 7)

SOR ¶ 2.d alleges and Applicant admitted that he received a general discharge under honorable conditions in February 2005 because of the conduct alleged in SOR ¶ 2.c. (Tr. 24; SOR response) His DD Form 214 shows his discharge was for misconduct. (AE A)

SOR ¶ 2.e alleges and Applicant admitted that in June 2013, his employer issued a warning to him for inappropriately clocking his spouse in and out from work on three occasions in violation of company policy. (Tr. 28; SOR response) He said he clocked in his spouse when she was in the parking lot so that she was not late for work. (Tr. 28)

SOR ¶ 2.f alleges and Applicant admitted he was convicted of driving under the influence of alcohol (DUI) in January 2004. (Tr. 29; SOR response) His blood alcohol content was .13. (Tr. 40; GE 2 at 14) He was sentenced to 365 days in jail (suspended),

a \$5,000 fine, and probation for five years. He received an alcohol-use evaluation which determined he did not need alcohol treatment. (Tr. 40; GE 2 at 15) His current level of alcohol consumption is one beer about every two months. (Tr. 30) There was no evidence of binge-alcohol consumption or alcohol-related misconduct in the past 10 years.

SOR ¶¶ 2.g and 2.h allege and Applicant admitted that he contributed to his spouse's substance-use disorder by purchasing heroin for her from June 2014 to October 2014. (SOR response) Around 2013 or 2014, Applicant's spouse used heroin in his presence. (Tr. 34) He decided it was safer for him to purchase heroin for her than for her to purchase it herself. (Tr. 35) In his April 18, 2018 SCA he said he "[p]urchased small amounts of heroin on a semi-weekly basis for spouse's personal use after spouse's long-term pain pill prescription was terminated and up until spouse went into inpatient treatment program. Spouse currently on daily Suboxone prescription." (GE 1 at 39) His first involvement with heroin was in "06/2014 (Estimated)," and his most recent heroin involvement was in "10/2014 (Estimated)" (*Id.*) In response to the question about the nature and duration of the involvement, he said "[p]urchased small amounts for spouse's personal use a few times a week." (*Id.*)

During his March 15, 2019, OPM interview, Applicant said he purchased heroin for her two to four times a week for \$20 per visit. (GE 2 at 13) At his hearing, he said he purchased heroin for her on nine or ten occasions. (Tr. 35) He did not indicate what his children were doing during those times when his wife was using the heroin he purchased for her. Around late 2014 to early 2015, Applicant convinced his spouse that she should enter an inpatient rehabilitation program. (Tr. 36) After completion of this program, she did not resume her heroin use. (Tr. 36) She currently takes Suboxone in lieu of heroin. (Tr. 36) Applicant advised the OPM investigator that his spouse failed a random urinalysis and lost her employment; however, he did not indicate the particular drug she was accused of using or the date when she lost her employment. (GE 2 at 12) He said his purchases of heroin were not common knowledge among his family members or friends "as it is a very personal matter." (*Id.* at 13)

SOR ¶¶ 2.i and 2.j allege and Applicant admitted he was arrested in August 2014 and October 2014, and charged with not using an ignition-interlock device on his vehicle in violation of his probation resulting from the DUI conviction in SOR ¶ 2.f. (Tr. 30; SOR response) Applicant said he drove to work without the interlock device because he needed to get to work to earn money to pay for the interlock device. SOR ¶ 2.l alleges and Applicant admitted he received 30 days in jail (work release) in November 2014 for violating the terms of his probation in connection with his failure to use the alcohol-interlock device. (Tr. 30; SOR response)

SOR ¶ 2.k alleges and Applicant admitted that he received a one-day suspension without pay in November 2014 from his employer for not maintaining acceptable attendance. (SOR response)

Character Evidence

When Applicant was in the Army, he served in an imminent danger pay area in support of Operation Enduring Freedom in Kuwait and Iraq from April 14, 2003, to April 13, 2004. (AE A) He received the following awards: Army Commendation Medal (ARCOM); National Defense Service Medal (NDSM); Global War on Terrorism Expeditionary Medal (GWTEM); Global War on Terrorism Service Medal (GWTSM); Army Service Ribbon (ASR); Army Good Conduct Medal (ARGCM); and Overseas Service Bar (OSB) (2nd Award). (*Id.*)

In January 2005, Applicant's company executive officer, platoon sergeant, squad leader, a staff sergeant, a sergeant, and his platoon leader provided positive descriptions of Applicant's duty performance and potential for future service. (AE C) A general sense of their descriptions is that Applicant was an outstanding soldier and excellent worker who showed initiative and was diligent, responsible, professional, and intelligent. (*Id.*) He needed no supervision, had good potential for rehabilitation, and made important contributions to mission accomplishment. (*Id.*) Several of their statements recommended his retention in the Army. (*Id.*)

Applicant said he has learned from his mistakes. (Tr. 39) He is a better person now. (Tr. 39)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk 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. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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.

AG ¶ 19 includes disqualifying conditions that could raise a security concern and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations;
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required; and
- (h) borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts.

The record establishes the disqualifying conditions in AG ¶¶ 19(a), 19(c), 19(f), and 19(h) requiring additional inquiry about the possible applicability of mitigating conditions. Discussion of the disqualifying conditions is contained in the mitigation section, *infra*.

The relevant financial considerations mitigating conditions under AG ¶ 20 in this case are as follows:

- (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;

(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;

(f) the affluence resulted from a legal source of income; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

Applicant's divorce from his first spouse, his second spouse's drug addiction, and his second spouse's unemployment caused financial problems, and such circumstances, were largely beyond his control. He does not receive full credit for these circumstances because his DUI, gambling, and heroin purchases were not beyond his control, and they contributed to his financial problems. Moreover, he did not prove he acted reasonably under the circumstances because he did not provide evidence of maintenance of contact with his creditors and that he established payment plans whenever possible.

In 2014, Applicant fell behind 180 days on his mortgage due to gambling and expenses from purchasing heroin for his wife. However, in 2014, he ended his gambling, and his spouse received inpatient drug rehabilitation and is not currently using heroin. Applicant's conduct in SOR ¶ 1.p (delinquent mortgage in 2014) is mitigated because it is not recent.

At his hearing, Applicant said he filed his tax returns for TYs 2013, 2014, and 2015 in 2018 or 2019. Most of the delinquent taxes were paid in 2019, and the remainder of his tax debt was paid in 2020. He filed his tax returns and paid his delinquent federal and state income tax debts before the SOR was issued on April 23, 2021. He is credited with mitigation of SOR ¶¶ 1.q, 1.r, and 1.s.

Applicant's SOR alleges in ¶¶ 1.b through 1.o that Applicant owes 14 delinquent debts totaling \$37,768. In late 2020 or early 2021, he refinanced his house and received about \$100,000. Most of the \$100,000 was used to remodel the kitchen of his residence. He used some of the remainder to pay any SOR debts not previously paid. I have credited Applicant with paying all of his SOR debts using part of the \$100,000 he recently borrowed when he refinanced his mortgage.

The Appeal Board addressed the scenario where an applicant used a debt consolidation loan to pay his delinquent SOR debts as follows:

When viewed from a macro perspective, the mitigative value of Applicant's efforts to resolve his financial problems remains uncertain. He obtained a debt-consolidation loan to pay three of the four alleged debts. In effect, he substituted one form of indebtedness (credit card debt) for another form (a debt-consolidation loan) or, looking at it in a different way, he converted old debt into new debt. He did not provide documentation setting forth the details of the debt-consolidation loan or show that he has made any payments toward this new loan. The evidence he presented fails to demonstrate that his financial situation has improved, fails to establish any meaningful track record of payments to reduce the indebtedness at issue, and fails to show that his financial problems are under control. In short, he has failed to prove his total indebtedness has been resolved in any significant manner. While we recognize that a debt-consolidation loan may be beneficial to an applicant in certain circumstances, we are unable to discern, based on the facts in this case, how merely substituting one form of debt for another, without more, reduces the security concerns arising from the alleged debts. As Department Counsel argues, Applicant's mitigation efforts amount to a promise to pay the indebtedness in the future, which is not a substitute for a track record of paying debts in a timely manner or otherwise acting in a financially responsible manner.

ISCR Case No. 20-01510 at 3-4 (App. Bd. July 14, 2021) (reversing grant of a security clearance and citing ISCR Case No. 14-04565 at 2 (App. Bd. Sept. 18, 2015)).

"[A]n applicant does not have to have paid off all of his debts in order to mitigate Guideline F concerns. However, 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." ADP Case No. 17-00263 at 4 (App. Bd. Dec. 19, 2018) (citing ISCR Case No. 16-03889 at 5 (App. Bd. Aug. 9, 2018)). Applicant is credited with using some of the funds from the refinance of his mortgage to pay all of his SOR debts that were not already paid. However, in 2009 he resolved debts using bankruptcy, and then in 2014, he

began accruing new delinquent debts, which were not resolved until 2020, after he completed his SCA and his OPM personal subject interview. Under the DOHA Appeal Board jurisprudence, his resolution of his delinquent SOR debts is too little, too late to mitigate security concerns. He did not prove that he had circumstances warranting his inordinate delay in paying his delinquent SOR debts. He did not establish that he was unable to make greater progress sooner paying his debts. I am not confident that he will be able to keep his new mortgage current, or that he will be unable to avoid new consumer delinquent debt. Applicant failed to establish mitigation of financial considerations security concerns.

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

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

The SOR alleges three disqualifying conditions in AG ¶ 16 that are relevant in this case. AG ¶¶ 16(c), 16(d)(3), and 16(e)(1) provide:

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

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard classified or sensitive information. This includes but is not limited to consideration of: . . . (3) a pattern of dishonesty or rule violations; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing

The evidence establishes AG ¶¶ 16(c), 16(d)(3), and 16(e). requiring additional inquiry about the possible applicability of mitigating conditions. Discussion of the disqualifying conditions is contained in the mitigation section, *infra*.

The personal conduct mitigating conditions under AG ¶ 17 that are relevant to this case are as follows:

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

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

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

Applicant's sexual abuse of an intoxicated woman in 1999 and his cocaine use in 2004 are not recent. He has not engaged in subsequent sexual misconduct, and there is no evidence that he has used illegal drugs after 2004. SOR ¶¶ 2.a through 2.d are mitigated. His timecard abuse in 2013 and unacceptable attendance in 2014 are minor and not recent. SOR ¶¶ 2.e and 2.k are mitigated.

Applicant's DUI in 2014 is serious misconduct. He was cited twice for probation violations in 2014 by driving without an alcohol interlock device. However, these offenses occurred more than seven years ago, are not recent, and have not recurred. There is no evidence of alcohol abuse in the previous 10 years. SOR ¶¶ 2.f, 2.i, 2.j, and 2.l are mitigated.

In 2014, Applicant purchased heroin and distributed it to his wife multiple times a week over a four-month period. At his hearing, he said his heroin distribution offenses occurred on only about nine or ten occasions. Applicant was minimizing his heroin involvement at his hearing by understating the amount of heroin distribution offenses. Heroin is a Schedule I controlled substance. See Drug Enforcement Administration website, <https://www.dea.gov/drug-information/drug-scheduling>. Heroin distribution is serious misconduct. His distribution of heroin risked his spouse's life because the heroin could have been contaminated. There is no evidence his employer, law enforcement, or community are aware of his involvement with heroin. SOR ¶¶ 2.g and 2.h are not mitigated. Personal conduct security concerns are not mitigated.

Whole-Person Concept

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

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

Under AG ¶ 2(c), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guidelines F and E 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.

Applicant is a 43-year-old aviation maintenance technician, and he has worked for a government contractor for 13 years. In 2007, he was awarded an associate's degree in computer science. He served in the Army from 1996 to 1999 and from 2001 to 2005. He was a private E-2 when he was discharged in 2005 with a general discharge under honorable conditions.

Applicant served in an imminent danger pay area in support of Operation Enduring Freedom in Kuwait and Iraq from April 14, 2003, to April 13, 2004. He received the following awards: ARCOM; NDSM; GWTEM; GWTSM; ASR; ARGCM; and OSB (2nd Award).

In January 2005, two officers and four noncommissioned officers provided positive descriptions of Applicant's duty performance and potential for future service. A general sense of their portrayals is that Applicant was an outstanding soldier and excellent worker who showed initiative and was diligent, responsible, professional, and intelligent. He needed no supervision, had good potential for rehabilitation, and made important contributions to mission accomplishment. Several of their statements recommended his retention in the Army. Applicant said he has learned from his mistakes, and he is a better person now.

The evidence against approval of Applicant's access to classified information is more persuasive. He incurred more delinquent debt after his nonpriority and unsecured debts were discharged under Chapter 7 of the Bankruptcy Code in 2009. He refinanced his mortgage in 2020 and used some of the proceeds to pay his delinquent SOR debts. However, he spent most of the funds from refinancing his home to remodel his kitchen

instead of saving the funds for potential emergencies or borrowing less money. He used new debt to pay old debt, and the amount of the new debt is significantly more than the old debt. He has a long history of delinquent debts. There is a lingering concern that he will have additional delinquent debts in the future. Applicant purchased heroin and distributed it to his wife on numerous occasions in 2014. I find his statement on his SCA to be the most credible description of his heroin involvement, and I conclude that he minimized the number of his heroin distributions at his hearing. There is no evidence that his employer and community are aware of his history of heroin purchase and distribution.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. Applicant's evidence did not overcome the *Dorfmont* presumption.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Unmitigated financial considerations and personal conduct security concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time.

Formal Findings

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.o:	Against Applicant
Subparagraphs 1.p through 1.s:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a through 2.f:	For Applicant
Subparagraphs 2.g and 2.h:	Against Applicant
Subparagraphs 2.i through 2.l:	For Applicant

Conclusion

In light of all of the circumstances in this case, 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.

Mark Harvey
Administrative Judge