



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 21-00265
)
Applicant for Security Clearance)

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

05/09/2022

Decision

HARVEY, Mark, Administrative Judge:

Guidelines E (personal conduct) and F (financial considerations) security concerns are mitigated; however, security concerns arising under Guideline H (drug involvement and substance misuse) are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On August 25, 2016, Applicant completed and signed her 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 H, E, and F. (HE 2) On May 4, 2021, Applicant responded to the SOR and requested a hearing. (HE 3)

On July 28, 2021, Department Counsel was ready to proceed. Processing of the case was delayed due to the COVID-19 pandemic. On January 5, 2022, the case was assigned to me. On January 26, 2022, DOHA issued a notice of hearing, setting the hearing for March 1, 2022. (HE 1) Her hearing was held as scheduled in the vicinity of Arlington, Virginia using the Microsoft Teams video teleconference system. (*Id.*)

During the hearing, Department Counsel offered 12 exhibits; Applicant offered 7 exhibits; and all exhibits were admitted without objection. (Tr. 15-20; Government Exhibits (GE) 1-GE 12; Applicant Exhibit (AE) A-AE F) On March 8, 2022, DOHA received a transcript of the hearing. She provided her 2021 performance review. (AE G) On March 18, 2022, the record closed. (Tr. 52-55; AE H)

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, she admitted the SOR allegations in ¶¶ 1.a and 1.b; 2.a through 2.e; and 3.a through 3.e. (HE 3) She also provided mitigating information. Her admissions are accepted as findings of fact. Additional findings follow.

Applicant is a 33-year-old project management analyst who has worked for her current DOD contractor since February 2020. (Tr. 7-9) In 2007, she graduated from high school, and in 2011, she received her bachelor's degree. (Tr. 7-8) In 2013, she received a master's degree in criminal justice and behavioral analysis. (Tr. 8) She has not served in the military. (Tr. 8) She has held a security clearance since October 2011. (Tr. 21) There is no evidence of security violations.

Drug Involvement and Substance Misuse

SOR ¶ 1.a alleges Applicant used methamphetamine on various occasions from about April 2018 to about August 2019. (HE 2) SOR ¶ 1.b alleges that she used marijuana or tetrahydrocannabinol (THC) in at least about January 2020. (*Id.*)

Applicant's boyfriend was a drug user. (Tr. 22-23) Her boyfriend injured his back, and he was prescribed Percocet. (Tr. 23) After his prescription ran out, he began using methamphetamine. (Tr. 23) He first brought methamphetamine into their residence in early 2017. (Tr. 23) She objected, and he took measures to hide the drugs from her. (Tr. 23) In April 2018, she was at a "real low point," and she decided to use methamphetamine. (Tr. 24) The other time she used methamphetamine was in August of 2019 after a fight with her boyfriend. (Tr. 25)

In about January 2020, Appellant traveled to a different state from where she currently resides to visit friends. (Tr. 28) She used marijuana. (Tr. 28) Her marijuana use was in a state where recreational use of marijuana has been legalized. (Tr. 29) She believed her security clearance was “still in effect” in January 2020. (Tr. 29) She did not believe in January 2020 that she would receive employment in which a security clearance would be necessary. (Tr. 28) She passed two pre-employment drug tests. (Tr. 29) She has not used illegal drugs since January 2020. (Tr. 30)

Applicant disclosed her methamphetamine use in April of 2018 and August of 2019 during her April 15, 2020 Office of Personnel Management (OPM) Enhanced Subject Interview (ESI). (GE 2 at 21) She blamed her methamphetamine use on the negative influence of her boyfriend. (*Id.*) She did not disclose any marijuana use during the OPM ESI. (*Id.*) She disclosed her marijuana use in January 2020 in her response to DOHA interrogatories. (GE 2 at 24) She indicated she was willing to abstain from illegal drug use in the future.

Personal Conduct

SOR ¶ 2.a cross alleges her uses of methamphetamine and marijuana in SOR ¶¶ 1.a and 1.b.

SOR ¶ 2.b alleges on January 4, 2018, Applicant was charged with Theft, Criminal Damaging and Possession of Criminal Tools, and she was convicted of Unauthorized Use of Property, and sentenced to 30 days in jail (suspended). Applicant admitted that she shoplifted a shirt. (Tr. 31-33) It was the first time she shoplifted. (Tr. 31)

SOR ¶ 2.c alleges on January 18, 2018, Applicant was charged with Theft. She was convicted of Disorderly Conduct and placed on probation for one year. The second time she shoplifted, she took a pair of sweat pants. (Tr. 32-33)

SOR ¶ 2.d alleges in April 2018, Applicant was charged with Theft and Possession of Criminal Tools. She was convicted of Petty Theft and sentenced to supervised criminal control for two years. The third time she shoplifted, she took some stationary items and a phone protector. (Tr. 33-34)

SOR ¶ 2.e alleges in July 2018, Applicant was charged with Theft. She was convicted of Unauthorized Use of Property and placed on probation for one year. In August 2019, she was charged with Probation Violation. The fourth time she shoplifted, she took some earrings. (Tr. 34)

Applicant believed she committed the offenses because she was frustrated at the lack of funds she had and her situation with her boyfriend. (Tr. 22, 36) He was spending all of her money and using methamphetamine. (Tr. 22) The highest valued item she took was a shirt valued at \$50. (Tr. 55) She received fines as part of her sentences for the shoplifting-related offenses.

There were one or two additional shoplifting incidents where she was not caught. (Tr. 35) Her most recent shoplifting was in July 2018. (Tr. 35) The shoplifting offenses occurred in two different jurisdictions and were resolved in two court cases. (Tr. 35) She was convicted of four misdemeanors, and she received probation. (Tr. 35-36) Upon her completion of probation, the records were sealed. (Tr. 18, 35; AE E)

Applicant had a positive drug test in August 2019 for methamphetamine while she was on probation. (Tr. 26) She informed her command of the drug-test result. (SOR response) In December 2019, she was released from probation, and she moved to a different state. (Tr. 27)

Financial Considerations

The SOR alleges the following debts: ¶ 3.a is a charged-off debt for \$4,852; ¶ 3.b is a charged-off debt for \$10,231; ¶ 3.c is a \$311 debt placed for collection; ¶ 3.d is a \$205 debt placed for collection; ¶ 3.e is a \$394 debt placed for collection.

Applicant's boyfriend, who was a methamphetamine user, took credit cards related to the debts in SOR ¶¶ 3.a and 2.b without her permission and charged purchases on her accounts. (Tr. 39; SOR response) She did not report his theft to the police. (Tr. 38, 49) She intends to pay the debt in SOR ¶ 3.a as soon as she is able to do so. (Tr. 39)

In October 2021, she settled and paid \$2,500 to resolve the debt in SOR ¶ 3.b. (Tr. 40; AE F) In February 2020, she paid the debt in SOR ¶ 3.c. (Tr. 41-42; AE C) She paid the debts in SOR ¶¶ 3.d and 3.e. (Tr. 42; AE B; AE C) In addition, to the SOR debts, she paid a medical debt and paid off her \$16,000 car loan. (Tr. 43) She has not missed any payments on any other debts. (Tr. 43)

Applicant and her husband each have current annual salaries of about \$80,000. (Tr. 44, 51) She has two credit cards, and they are in pays as agreed status. (Tr. 45) She has about \$6,500 in a 401(k) account. (Tr. 46) She is current on all of her state and federal tax filing and paying obligations. (Tr. 46) She has not had financial counseling; however, she uses a budget to help her decide her expenditures. (Tr. 46-47)

Conclusion

Appellant moved to a different state in December 2019. She has not had any contacts with her methamphetamine using boyfriend since August of 2019. She recently married. Her supervisor wrote that she is honest, trustworthy, and responsible. (AE A) He recommends approval of her security clearance. (Id.)

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

Drug Involvement and Substance Misuse

AG ¶ 24 provides the security concern arising from drug involvement and substance misuse stating:

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.

DNI Memorandum ES 2014-00674, "Adherence to Federal Laws Prohibiting Marijuana Use," October 25, 2014, states:

[C]hanges to state laws and the laws of the District of Columbia pertaining to marijuana use do not alter the existing National Security Adjudicative Guidelines An individual's disregard of federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations. As always, adjudicative authorities are expected to evaluate claimed or developed use of, or involvement with, marijuana using the current adjudicative criteria. The adjudicative authority must determine if the use of, or involvement with, marijuana raises questions about the individual's judgment, reliability, trustworthiness, and willingness to comply with law, rules, and regulations, including federal laws, when making eligibility decisions of persons proposed for, or occupying, sensitive national security positions.

Recently, the Security Executive Agent (SecEA) promulgated clarifying guidance concerning marijuana-related issues in security clearance adjudications. It states in pertinent part:

[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.¹

AG ¶ 25 provides two conditions that could raise a security concern and may be disqualifying in this case: “(a) any substance misuse (see above definition);” and “(c) illegal possession of a controlled substance. . . .” The record establishes AG ¶¶ 25(a) and 25(c). Additional information is contained in the mitigation section, *infra*.

AG ¶ 26 lists four conditions that could mitigate security concerns:

(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;

(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:

(1) disassociation from drug-using associates and contacts;

(2) changing or avoiding the environment where drugs were used; and

(3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility;

(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.

¹ *Security Executive Agent 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 (SecEA Clarifying Guidance), at page 2.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board concisely 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, [App. A] ¶ 2(b).

None of the mitigating conditions fully apply; however, Applicant provided some important mitigating information. She voluntarily disclosed her methamphetamine possession and use, during her OPM ESI, and she disclosed her methamphetamine and marijuana use in her response to DOHA interrogatories, SOR response, and at her hearing. She has never been arrested for a drug-related offense. She indicated she was willing to abstain from future marijuana and methamphetamine possession and use.

The evidence against mitigation is more persuasive at this time. In ISCR Case No. 16-03460 at 4 (App. Bd. May 24, 2018), the applicant had a history of marijuana use, and the Appeal Board said:

A clearance adjudication is aimed at determining if an applicant has the requisite judgment and reliability to abide by rules designed to protect classified information. . . . [Security concerns arise if] there is doubt as to whether he [or she] will follow the regulatory requirements for handling classified information, which might, in the event, appear burdensome. Access to national secrets entails a fiduciary duty to the U.S. A person who enters into such a fiduciary relationship is charged with abiding by legal and regulatory guidance regardless of whether he or she believes that guidance to be wise.

Possession of a Schedule I or II controlled substance is a federal criminal offense. Schedules I, II, III, IV, and V, as referred to in the Controlled Substances Act are contained in 21 U.S.C. § 812(c). Marijuana is a Schedule I controlled substance, and methamphetamine is a Schedule II controlled substance. See Drug Enforcement Administration, *Drug Scheduling* listing at <https://www.dea.gov/drug-information/drug-scheduling/>. See also *Gonzales v. Raish*, 545 U.S. 1 (2005) (discussing placement of marijuana on Schedule I).

The SOR did not allege under Guideline H that Applicant tested positive during her probation urinalysis test in August 2019 for methamphetamine, and it did not allege she failed to disclose her marijuana use in January 2020 during her April 15, 2020 OPM ESI.

In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

- (a) to assess an applicant's credibility;
- (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances;
- (c) to consider whether an applicant has demonstrated successful rehabilitation;
- (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or
- (e) to provide evidence for whole person analysis under Directive Section 6.3.

Id. (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See also ISCR Case No. 12-09719 at 3 (App. Bd. Apr. 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). The non-SOR allegation will not be considered except for the five purposes listed above.

Applicant possessed and used marijuana and methamphetamine even though she was aware that she held a security clearance. She knew possession of methamphetamine was illegal. An applicant who uses illegal drugs after having been placed on notice of its employment or security significance "may be lacking in the qualities expected of those with access to national secrets." See *generally* ISCR Case No. 17-03191 at 3 (App. Bd. Mar. 26, 2019) (citing ISCR Case No. 17-04198 at 2 (App. Bd. Jan. 15, 2019) ("An applicant's misuse of drugs after having been placed on notice of the incompatibility of drug abuse with clearance eligibility raises questions about his or her judgment and reliability")). Applicant may have family and friends who use marijuana, and she may be in the vicinity of marijuana in the future.

More time without marijuana and methamphetamine possession and use must elapse before I will be able to confidently rule out future involvement with illegal drugs. Guideline H security concerns are not mitigated at this time.

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"; and "(c) a history of not meeting financial obligations."

In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

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

The financial considerations mitigating conditions under AG ¶ 20 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; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant described a circumstance beyond her control, which adversely affected her finances. Her boyfriend charged purchases on her credit cards without her permission. However, “[e]ven if applicant’s financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the judge could still consider whether applicant has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999)).

Another component under AG ¶ 20(a) is whether Applicant maintained contact with several SOR creditors and attempted to negotiate partial payments to keep debts current. She did not prove that she maintained contact with several of her SOR creditors or that she made offers to make partial payments to them prior to receipt of the SOR.

An administrative judge is “required to examine all the circumstances surrounding the debts and their eventual satisfaction” including the timing of any settlements, applicant’s salary for the past several years, and whether a debt or debts “had already been reduced to judgment.” ISCR Case No. 20-01656 at 5 (App. Bd. Mar. 31, 2022) (citing ISCR Case No. 03-04704 at 4 (App. Bd. Sep. 21, 2005)). The Appeal Board has noted, “an applicant who resolves financial problems after being placed on notice his or her security clearance may be in jeopardy may lack the judgment and self discipline to follow rules and regulations over time or when there is no immediate threat to his [or her] own interests.” ISCR Case No. 17-01213 (App. Bd. June 29, 2018) (citing ISCR Case No. 14-05476 at 4 (App. Bd. Mar. 25, 2016)).

Applicant paid all of her SOR debts except for SOR ¶ 1.a for \$4,852. She assured she will pay this debt when able to do so. Applicant and her husband’s gross annual income is about \$160,000. She provided convincing evidence that she will be able to maintain her financial responsibility. There is sufficient evidence that her financial problems will not recur in the future. Under all the circumstances, she mitigated 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 possessed and used marijuana or methamphetamine or both in 2018, 2019, and 2020. These offenses are already alleged in SOR ¶¶ 1.a and 1.b. They are sufficient for an adverse determination under Guideline H. SOR ¶ 2.a is mitigated as a duplication.

Applicant shoplifted four to six times in 2018, and she was arrested four times for shoplifting. Her involvement with her boyfriend at the time, who was a thief and drug user was responsible in part for her bad decisions. Her shoplifting has not recurred since 2018 and is not recent. SOR ¶¶ 2.b through 2.e are mitigated.

Security officials are aware of Applicant's drug involvement and substance misuse and four misdemeanor convictions for shoplifting-related offenses. Personal conduct security concerns are 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 H, F, and E 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 is a 33-year-old project management analyst who has worked for her current DOD contractor employer since February 2020. In 2011, she received her bachelor's degree, and in 2013, she received a master's degree in criminal justice and behavioral analysis. She has held a security clearance since October 2011. There is no evidence of security violations.

Applicant disclosed her marijuana and methamphetamine possession and use during her OPM ESI or DOHA interrogatories or both, on her SOR response, and at her hearing. An honest and candid self-report of drug abuse is an important indication that, if granted security clearance eligibility, the individual would disclose any threats to national security, even if the disclosure involves an issue that might damage his or her own career or personal reputation. However, the mitigating weight of Applicant's disclosures is undermined by her marijuana and methamphetamine possession and use while holding a security clearance. Her methamphetamine use as recently as August 2019, and her marijuana use as recently as January 2020 are too recent to be fully mitigated at this time.

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. "[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant's eligibility for access to classified information." ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No. 12-00270 at 3 (App. Bd. Jan. 17, 2014)).

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards establishing a track record of abstention from possession and use of illegal drugs, and a better record of behavior consistent with her obligations, she may well be able to demonstrate persuasive evidence of her security clearance worthiness.

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. Applicant mitigated personal conduct and financial considerations security concerns; however, she failed to mitigate drug involvement and substance misuse security concerns.

Formal Findings

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

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Paragraph 2, Guideline E:	FOR Applicant
Subparagraphs 2.a through 2.e:	For Applicant
Paragraph 3, Guideline F:	FOR APPLICANT
Subparagraphs 3.a through 3.e:	For Applicant

Conclusion

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

Mark Harvey
Administrative Judge