



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

In the matter of: )  
 )  
 REDACTED ) ISCR Case No. 20-03307  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Carroll J. Connelley, Esq., Department Counsel  
For Applicant: Gregg W. Wagman, Esq.

07/26/2022

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

In June 2021, Applicant was granted a Chapter 7 bankruptcy discharge of \$93,661 in nonpriority unsecured claims incurred during his short-lived marriage. He made no effort to attempt settlements with his creditors before filing for bankruptcy, but circumstances outside of his control compromised his finances. He wrongly used marijuana with his then wife on three occasions in the summer of 2016, while he held a Department of Defense (DOD) security clearance. He had a record of timely debt payments before he decided to resort to bankruptcy, and he intends no future illegal drug involvement. Clearance eligibility is granted.

**Statement of the Case**

On August 26, 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.

On September 3, 2021, Applicant responded to the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On November 30, 2021, the SOR was amended to add an allegation under Guideline F. Applicant admitted the allegation without comment on December 9, 2021.

On January 10, 2022, a DOHA Department Counsel indicated that the Government was ready to proceed to a hearing. 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 security clearance eligibility for Applicant. I received the case file and assignment on February 11, 2022.

On May 17, 2022, Counsel for Applicant entered his appearance. After some coordination with the parties, on May 17, 2022, I scheduled Applicant's hearing for June 7, 2022. The hearing was convened as scheduled. Five Government exhibits (GEs 1-5) and six Applicant exhibits (AE A-F) were admitted in evidence without any objections. Applicant and two witnesses testified, as reflected in a hearing transcript (Tr.) received on June 23, 2022.

### **Findings of Fact**

The SOR alleges under Guideline F that, as of August 26, 2021, Applicant owed charged-off debts of \$30,922 (SOR ¶ 1.a); \$9,995 (SOR ¶ 1.b); \$3,075 (SOR ¶ 1.c); \$12,011 (SOR ¶ 1.d); and \$31,487 (SOR ¶ 1.e); and that Applicant received a Chapter 7 bankruptcy discharge in June 2021 (SOR ¶ 1.f). Under Guideline H, Applicant is alleged to have used marijuana three times between June 2016 and September 2016 while he held access eligibility for classified information (SOR ¶ 2.a). When Applicant answered the SOR, he admitted that he had owed the five alleged debts, which became delinquent because of his divorce and the failure of tenants, and that he had received a discharge of those debts in a Chapter 7 bankruptcy before the SOR was issued.

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

Applicant is 37 years old and divorced. He served in the enlisted ranks of a branch of the United States military from June 2003 until April 2014. He achieved E-6 rank and was granted an honorable discharge. He took some classes at a community college from

January 2012 to December 2013. He has worked as a nuclear test engineer for his current employer, a defense contractor, since his discharge from the military in April 2014. He held a DOD security clearance at the level of secret from 2003 until it was suspended upon the issuance of the SOR. (GE 1; Tr. 24-25.) His security clearance eligibility was last renewed in 2014 for his defense-contractor employment. (Tr. 45.)

Applicant purchased a home in October 2010. He obtained a mortgage loan for \$215,526 with initial repayment at \$1,435 per month. (GE 2; AE E.) Available credit reports show that he obtained a car loan in August 2010 for \$34,613, which he paid off one year later in a \$30,737 lump sum. In May 2011, he obtained a car loan for \$29,090 that he paid off in April 2013 in a \$22,089 lump sum. (GE 3.)

On his marriage in October 2015, Applicant moved in with his ex-wife, who co-owned her home with her ex-husband. (Tr. 41.) Applicant kept his house as a rental property. His ex-wife's income as a registered nurse was comparable to his income. (Tr. 27.) However, she had poor credit so the debts incurred during their marriage were in Applicant's name. (Tr. 42.) He made his debt payments on time. (AEs D-E.)

Around January 2018, Applicant decided to divorce his ex-wife for her infidelity. (GEs 1, 5; Tr. 25.) He consulted with an attorney about a bankruptcy, and was advised to wait until his divorce was final. He had some sizeable debts but was making payments on them. He was informed that if he was committed to filing for bankruptcy, he would not benefit from making payments on his unsecured debts. (Tr. 48.) He and his attorney had discussed a possible Chapter 13, but Applicant preferred a Chapter 7 filing because he "would be out of it in a matter of months rather than a period of three to five years." He wanted to stabilize his life after his divorce sooner rather than later. (Tr. 50.) On the advice of the bankruptcy attorney, Applicant stopped paying on his unsecured debts, including a loan in his name (SOR ¶ 1.a) for the car his ex-wife was driving. (Tr. 27, 36, 40.) He continued to make the payments on the mortgage for his property, in which he had tenants, and on his loan for a 2007 model-year car that he was driving. He had obtained the loan in October 2016 for \$14,876. (GE 2.)

Applicant's house was rented out, so on his marital separation in February 2018, Applicant moved into a one-bedroom apartment at rent of approximately \$900 a month. (GE 1; Tr. 28, 49.) In March 2018, his tenants stopped paying the rent. He asserts that "there was zero chance that [he] would have been able to maintain those payments" on his unsecured debts at that point. (Tr. 37.) He lost about \$7,000 in rental income between March 2018 and August 2018 (GE 5), and fell behind in his mortgage payments over that time. (GE 2; AEs C-D.) He paid his ex-wife \$600 a month during the divorce proceedings from March 2018 to December 2018. (Tr. 49-50.) In August 2018, he succeeded in having his tenants evicted. (GE 1; AE F; Tr. 28, 37-38.) Of the \$1,064 in legal fees and disbursements for the eviction proceeding, he had paid all but \$89 as of August 21, 2018. (AE F.) By then, the accounts in the SOR had been charged off. (GE 2; AE D.) Applicant made no efforts to try and settle any of the past-due debts. (Tr. 45.)

Applicant and his ex-wife's divorce was final in December 2018. (GE 1; AE B.) They share custody of their daughter now age 5, and split the time spent with their daughter. (AE B, Tr. 30.) Applicant has paid \$100 a week in child support since his divorce. (GE 5; Tr. 36.) He has never been behind in his child support payments. (Tr. 48.)

To renew his security clearance eligibility, Applicant completed and certified as accurate a Questionnaire for National Security Positions (SF 86) on January 16, 2020. He disclosed that he had used marijuana recreationally with his then wife on two or three occasions between June 2016 and September 2016 while he held a security clearance. He denied any intention to use marijuana in the future, as he did not enjoy it and has since been divorced from his ex-wife whose drug use was a contributing factor. (GE 1.)

In response to SF 86 inquiries about any financial delinquency involving routine accounts, Applicant listed seven delinquent accounts: a \$28,101 deficiency balance on a loan for a repossessed vehicle that his ex-wife retained after the divorce (SOR ¶ 1.a); \$3,060 on an unsecured loan obtained for home improvements (driveway repaving, Tr. 41) in collection (SOR ¶ 1.c); three credit-card debts in collection for \$9,996 (SOR ¶ 1.b), \$12,017 (SOR ¶ 1.d), and \$2,515 (not alleged in SOR); a \$31,487 balance on a debt-consolidation loan in collection (SOR ¶ 1.e); and a \$1,291 hospital bill in collection (not alleged). Applicant explained that he was unable to afford the payments on the accounts after his marital separation as he had to establish a new household and provide for his daughter. He expressed a plan to file for a Chapter 7 bankruptcy with his tax refund for 2019 and that he had been told by his lawyer to concentrate on remaining current on his mortgage loan and his car loan. (GE 1.)

As of May 12, 2020, Applicant's credit report showed that he was on time with his monthly payments of \$1,460 and \$341 on his mortgage and car loans. He had not been late on his mortgage since September 2018, and had never missed a car payment. As of April 2020, the balances were \$175,204 (mortgage) and \$2,032 (car loan). He reportedly owed the following charged-off balances: \$30,922 (SOR ¶ 1.a, opened for \$59,071 in October 2016, charged off for \$18,646 in July 2018); \$9,995 (SOR ¶ 1.b, charged off in July 2018); \$3,075 (SOR ¶ 1.c, charged off in July 2018); and \$12,011 (SOR ¶ 1.d, charged off for \$12,016 in August 2018). His credit report reflected that a past-due balance of \$31,487 (SOR ¶ 1.e) was charged off in June 2018. (GE 2.) Information gleaned from a May 2022 credit report indicates that he obtained the loan for \$40,000 in June 2016, so he had paid down the loan until February 2018. (AEs C, E.)

On May 19, 2020, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). He explained that he divorced his ex-wife for her infidelity, and that he had no obligations in the divorce to his ex-wife apart from his child support. He retained those assets that he had brought into the marriage, including his house. He denied any use of marijuana beyond his brief experimentation with his ex-wife in the summer of 2016. He held a DOD secret clearance at the time of his drug use and admitted knowing that he was not authorized to use marijuana and should have reported it. Applicant acknowledged owing the delinquencies in SOR ¶¶ 1.a-1.e as well as the \$1,291 medical debt listed on his SF 86. He explained about the car loan for his ex-wife's vehicle

(SOR ¶ 1.a) that it was in his name; that she made no effort to pay on the loan during their separation; and that the vehicle was repossessed and sold. (GE 5.) The vehicle was repossessed in May 2018. (Tr. 39.)

Applicant explained to the OPM investigator that the credit-card accounts in SOR ¶¶ 1.b-1.d were for household expenses and to repave his driveway. The debt-consolidation loan in SOR ¶ 1.e was used to pay off some credit-card debts and for household expenses. He attributed his financial issues to his divorce because he had to establish a new residence for himself on their separation and also a tenant did not pay rent from March 2018 to August 2018. He lost about \$7,000 in income and had to evict the tenant in 2018. After consulting with a bankruptcy attorney, he decided to keep current on his mortgage and car loans needed to live, and he stopped paying on unnecessary accounts that he could not afford to repay. Applicant expressed that he planned to resolve his delinquent debts by filing for bankruptcy in the future when he had the money to pay a bankruptcy attorney. (GE 5.)

Applicant retained his bankruptcy attorney on August 26, 2020, at a flat fee of \$2,500. (GE 4; Tr. 29.) He asserts that he could not previously afford to retain a bankruptcy attorney because he had other legal fees stemming from his divorce and the eviction proceedings. (Tr. 29.)

As of November 3, 2020, Applicant was still current on his mortgage loan. In October 2020, he paid off the loan for his vehicle, a 2007 model-year car that he retained following his divorce. (AE E.) He still has that car (Tr. 39), as well as a 2017 model-year truck that he bought in October 2020 with a loan for \$34,285, to be repaid at \$633 per month for 72 months. (GEs 3-4.) That truck loan does not appear on his June 2022 credit reports (AEs D-E), but he listed the truck loan as a secured debt on his bankruptcy petition. (GE 4.) The debts in SOR ¶¶ 1.a-1.d were on his credit report as past-due balances with no progress toward repayment. The debt in SOR ¶ 1.e was not on his credit report. (GE 3.)

After completing a debtor-education course required for a bankruptcy filing, Applicant filed a no-asset Chapter 7 bankruptcy petition on March 8, 2021. (Tr. 30-31.) He listed \$93,661 in unsecured, nonpriority claims on nine accounts: the five accounts in the SOR; three medical debts of \$328, \$1,291, and \$2,046; and a \$2,542 credit-card debt. (GE 4.) That credit card does not appear on the credit reports in evidence, so it is unclear when he opened that account or whether it was delinquent as of his bankruptcy filing. He exempted his two secured claims (the truck and mortgage loans) from his bankruptcy and indicated that he intended to retain the properties and continue to make his payments. He reported wage income of \$86,631 in 2019 and \$100,353 in 2020, but also that his monthly expenses exceeded his income by about \$10. He listed a checking-account balance of \$222; one cent in savings; \$2,497 in an investment account; and \$13,498 in a retirement account at work. He completed a required financial management course around March 18, 2021, and was granted a Chapter 7 bankruptcy discharge on June 16, 2021. (GE 4; Tr. 30-31.)

Applicant opened a credit-card account with a \$600 credit limit in June 2021. He made his payments on time and had a \$387 balance on the account as of May 2022. (AEs D-E.) His gross annual salary from his defense-contractor job is currently \$111,900. (Tr. 33-34.) As of June 2022, he had approximately \$2,000 in checking and almost \$400 in savings deposits. (Tr. 35.) In addition to his child support at \$100 per week, he pays half of his daughter's childcare expense, which is currently at \$105 per week. (Tr. 52.)

Applicant has not used marijuana since the summer of 2016 when he used marijuana on three occasions with his ex-wife: one time at her parents' home and the other two times in their home. He does not intend to use marijuana in the future. He understands that any future illegal drug use could affect his security clearance eligibility. (Tr. 30-31, 46.) Applicant knew that, as a defense-contractor employee, marijuana use was not allowed. (Tr. 46.)

### **Character References**

A co-worker, who has known Applicant since 2010 when they served as radiological control technicians together, is aware that Applicant filed for divorce and to evict his tenants. She first learned of the debt and drug issues in the SOR and of his bankruptcy in preparing for her testimony with Applicant's attorney. She has not seen any concerning behaviors from Applicant with regard to his ability to safeguard classified information. (Tr. 55-60.)

Applicant's direct supervisor for the last three to four years has known Applicant for about ten years. Although not aware of the details, he knew well before Applicant's hearing that Applicant was going through a divorce and a bankruptcy, and that he had lost his security clearance. The supervisor testified that he was aware of the issues of concern to the Government, although it is unclear whether he knows that Applicant used marijuana in the summer of 2016. The loss of Applicant's clearance impacted that work that the supervisor could assign to him. Applicant has been careful since then to ensure that he does not work on classified matters. When Applicant held a clearance, he strictly complied with security regulations. His supervisor does not consider Applicant to be a security risk. He considers Applicant to be very patriotic. In their limited social interactions outside of work, which includes helping Applicant with a couple of things at his home, this supervisor has "definitely not" seen any signs of excessive spending on Applicant's part. Applicant is currently transitioning into being a lead shipper and does not need a security clearance to perform that job, but if he regains his clearance eligibility, he would have more flexibility at work. (Tr. 63-67.)

### **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 does not pay financial obligations according to terms. Available credit reports show that Applicant defaulted in 2018 on the five accounts listed in the SOR. He stopped paying on the debts around February 2018, as he had decided on a Chapter 7 bankruptcy as his fastest way to stabilize his finances after his divorce. He made no efforts to settle the debts with his creditors, and as of May 2020, he owed about \$87,490 on the charged-off accounts.

Applicant's legal liability for repayment was discharged in a Chapter 7 bankruptcy granted in June 2021, Title 11 Section 525 of the United States Code, provides protection against discriminatory treatment for a debtor in bankruptcy with regard to granting or denying employment or denying, revoking, suspending or refusing to renew a license, permit, charter, franchise, or other similar grant. Bankruptcy is a legal remedy and no adverse conclusions are to be drawn solely on the basis of a bankruptcy. At the same time, in the security clearance context, the federal government is still entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy debts in a timely manner. *See, e.g.*, ISCR Case No. 14-03991 at 2 (App. Bd. Jul. 1, 2015). The Appeal Board has held that the administrative judge is not precluded from considering whether the circumstances underlying a debt impugn an applicant's judgment or reliability. *See, e.g.*, ADP Case No. 14-022-6 at 3 (App. Bd. Oct. 15, 2015). This is so even with respect to debts that have been discharged in bankruptcy. *See, e.g.*, ISCR Case No. 15-02326 at 2 (App. Bd. Oct. 24, 2016). An applicant's financial history and circumstances are relevant in assessing his or her self-control, judgment, and other qualities essential to protecting the national interest as well as the vulnerabilities inherent in the circumstances. The following disqualifying conditions under AG ¶ 19 have some applicability:

- (a) inability to satisfy debts;



- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has the burdens of production and persuasion in establishing sufficient mitigation to overcome the financial concerns raised by his loan and credit-card defaults. 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; and
- (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.

AG ¶ 20(a) has some applicability in that Applicant's divorce, which had a negative impact on his finances, is a circumstance that is unlikely to recur. The passage of four years since the debts became delinquent and were charged off carries little weight in mitigation, given the debts were ignored and unresolved before his 2021 bankruptcy. 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)).

AG ¶ 20(b) is established in some aspects. Applicant filed for the divorce, knowing that it would impact his financial situation, He had no control over his ex-wife's lack of fidelity to their marriage. While it appears that he had already decided to default on his unsecured debts, his tenant's failure to pay rent from March 2018 to August 2018 was another circumstance outside of his control. He had no rental income with which to make the mortgage payments on his property at a time when he had to pay for an apartment for himself and had legal fees and disbursements totaling \$1,064 for his tenant's eviction. He also paid his ex-wife \$600 a month from about February 2018 until their divorce was final in December 2018.

Full mitigation under AG ¶ 20(b) requires that an individual act responsibly under his or her circumstances. One component of financial responsibility is to remain in contact with one's creditors and attempt to negotiate resolution of debt balances. He admits he made no attempt to contact his creditors. He decided to file for bankruptcy in early 2018 and then did not file his Chapter 7 petition until March 2021. While he asserts that he could not

afford to file before then, in part due to other legal fees for his divorce and eviction proceedings, he owed only \$89 to the attorney who handled the eviction as of what appears to be the attorney's final billing in August 2018. He may well have had outstanding legal fees for his divorce, but he provided no details in that regard. Moreover, available credit reports show that shortly after he retained his bankruptcy attorney in August 2020, in October 2020, he obtained a truck loan for \$34,285. He took on a \$633 monthly payment obligation as his unsecured creditors went unpaid and he was planning a Chapter 7 filing. These financial decisions, made in his self-interest, are not mitigated under AG ¶ 20(b).

A Chapter 7 discharge is not a good-faith effort to resolve debts under AG ¶ 20(d) ("the individual is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts"). See ISCR Case No.02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)). However, it is a legal means of debt resolution that warrants consideration of AG ¶ 20(c). He had financial counseling through the bankruptcy, which is required for mitigation under AG ¶ 20(c), and because his legal liability for repayment has been discharged, the debts are no longer a source of financial pressure for Applicant. The salient issue becomes whether his financial situation is under control to where he can be relied upon to meet his financial obligations on time in the future when his access to credit is adversely affected because of his bankruptcy. There is favorable evidence in that regard in that Applicant had a track record of timely payments on his debts before his marriage. He has never missed a child support payment. Apart from the truck loan, which he was not asked about during his hearing, he has opened only one new credit-card account since his divorce in 2018. He has been on time with his payments on that account. The truck loan was a new loan as of his November 2020 credit report with Equifax (GE 3), and it does not appear on Applicant's May 2022 credit reports with Trans Union (AE C) or Experian (AE D). He listed the truck as an asset to retain in his Chapter 7 bankruptcy, as he intended to continue to make payments on the debt. There is no documentation in evidence showing his payment history. He has a history of timely payments on other car loans, excluding the loan discharged in bankruptcy for the vehicle his ex-wife retained in the divorce (SOR ¶ 1.a).

Applicant did not show adherence to duty or obligation to his creditors by obtaining a bankruptcy discharge. Certainly, he would have had a stronger case in mitigation had he demonstrated a track record of timely repayment of the SOR debts. However, his financial problems were primarily caused by his divorce. He appears to be living within his means. There is no evidence of recent financial overextension that would suggest his financial problems are likely to reoccur. His financial situation does not currently raise 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 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 used marijuana recreationally with his ex-wife three times between June 2016 and September 2016. He held a DOD secret clearance at the time and knew that marijuana use was contrary to his clearance eligibility and defense-contractor employment. The following two disqualifying conditions under AG ¶ 25 apply:

- (a) any substance misuse (see above definition); and
- (f) any illegal use while granted access to classified information or holding a sensitive position.

Applicant bears the burden of establishing that matters in mitigation apply to his marijuana use. The following mitigating conditions in AG ¶ 26 are relevant:

- (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; and
- (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.

In evaluating Applicant's marijuana use, I note that he was a long-time security clearance holder while serving in the U.S. military. His clearance eligibility was last renewed in 2014 for his defense-contractor employment. While the security clearance application that he would have completed at that time is not in evidence, he clearly understood that by applying for renewal of his clearance, he promised to abide by federal drug laws and DOD policy that prohibited the use of marijuana. In ISCR Case No. 16-03460, decided on May 24, 2018, the Appeal Board clearly stated:

A person who broke a promise to abide by drug laws after having been placed on notice that drug use is not compatible with access to classified information has not demonstrated the quantum of reliability expected of those with access to classified information.

In light of that Appeal Board precedent, neither the limited extent of Applicant's marijuana use nor the four years since his use, which are mitigating considerations under AG ¶ 20(a), are alone enough to mitigate the security concerns. However, I am persuaded that his drug use was situational and is not likely to recur. Although he has some contact with his ex-wife because they share custody of their young daughter, the dissolution of their marriage satisfies AG ¶¶ 26(b)(1) and 26(b)(2). She was the source of his marijuana, and he used it only with her. AG ¶ 26(b)(3) applies in that Applicant, who reported his drug use on his 2020 SF 86, does not intend to use any illegal drug, including marijuana, in the future. He admits that it was a lapse of judgment on his part, and he has not tried to excuse his drug involvement. The drug involvement and substance abuse security concerns are mitigated.

### **Whole-Person Concept**

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

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

coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

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

The security clearance adjudication 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. Jun. 21, 2010). Applicant's financial problems and drug use occurred during his marriage or as a result of his marriage. His ex-wife had poor credit and used illegal drugs. At the same time, Applicant bears responsibility for the decisions that he made during his marriage, which included incurring debt in his name, and using marijuana.

Applicant responsibly sought professional advice about his indebtedness when faced with the prospect of going from a two income to one income household on filing for divorce. By all accounts, he did not allow his issues at home, financial or marital, to adversely affect his work performance or his ability to handle classified information. His supervisor attests that Applicant strictly complied with the procedures for handling and safeguarding classified information. While his work performance, however laudable, does not minimize the seriousness of his financial issues or of his marijuana use while holding a clearance, it weighs favorably as to whether he can be relied upon to handle classified information appropriately. After considering the circumstances, and mindful that clearance decisions are not intended as punishment for past shortcomings, I find it clearly consistent with the interests of national security to grant or reinstate Applicant's eligibility for a security clearance.

### **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: | FOR APPLICANT |
| Subparagraphs 1.a-1.f:    | For Applicant |
| Paragraph 2, Guideline H: | FOR APPLICANT |
| Subparagraph 2.a:         | For Applicant |

## **Conclusion**

In light of all of the circumstances, it is clearly consistent with the interests of national security to grant or reinstate Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Elizabeth M. Matchinski  
Administrative Judge