



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



In the matter of:)) [Name Redacted])) Applicant for Security Clearance)	ISCR Case No. 21-00293
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Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro se*

02/09/2023

Decision

HOGAN, Erin C., Administrative Judge:

On March 24, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline H, Drug Involvement; Guideline E, Personal Conduct; and Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented within the Department of Defense on June 8, 2017.

On June 29, 2021, Applicant answered the SOR and requested a hearing before an administrative judge. Applicant supplemented the SOR answer at a date unknown sometime after the original SOR Answer and the date of the hearing. (Gov 1) On March 18, 2022, another administrative judge was assigned the case. The case was transferred to me on November 8, 2022. On November 15, 2022, a Notice of Hearing was issued, scheduling the hearing on December 13, 2022. The hearing was held as scheduled. During the hearing, the Government offered nine exhibits which were admitted without objection as Government (Gov) Exhibits 1 - 9. Applicant testified and offered one exhibit which was admitted without objection as Applicant Exhibit (AE) A. The record was held open until December 3, 2022, to allow the Applicant to submit

additional exhibits. Applicant timely submitted a 35-page document which was admitted, without objection, as AE B. The transcript was received on December 22, 2022. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

Findings of Fact

In his answer to the SOR, Applicant admits to all allegations in the SOR with some explanations.

Applicant is a 36-year-old employee of a DOD contractor who seeks a security clearance. He has held a security clearance since 2009. He has been employed with his current employer since January 2021. He was employed by other defense contractors prior to this position. He earned a bachelor's degree in the spring 2022. He married in 2011, but separated from his wife in 2013. They have a ten-year-old son who lives with his wife. He has lived with a cohabitant since 2018. From 2009 to 2014, he served on active duty in the United States Army. He was separated for medical reasons due to a shoulder injury. (Gov 2, Gov 3, Tr. 19-26) (Note: The facts in this decision do not specifically describe employment, names of witnesses, or locations in order to protect Applicant's and his family's privacy. The cited sources contain more specific information.)

Drug Involvement

Under the drug involvement concern, the SOR alleged Applicant used marijuana from March 2018 to August 2018. (SOR ¶ 1.a: Gov 1 at 1; Gov 2 at 42) In his response to the SOR, he admits to using marijuana on a couple occasions. In response to Section 23, Illegal Use of Drugs or Drug Activity, on his January 21, 2020 security clearance application, he listed using marijuana between March 2018 and August 2018, on 10 occasions. He indicated he used marijuana for relaxation and pain. During the hearing, he testified that he used marijuana to help with pain in his shoulder. He injured his left shoulder while in the Army. He was ultimately medically boarded and discharged from the U.S. Army as a result of this injury. He stopped using marijuana when the Department of Veterans Affairs (VA) prescribed him a long-term pain medication that was effective in controlling his pain. (Tr. 26-27; Gov 2 at 27)

Applicant states he never used marijuana before this time and has not used marijuana since August 2018. He is aware that use of illegal drugs is not consistent with holding a security clearance. He provided the results of numerous drug tests taken on May 14, 2019; October 22, 2019; February 3, 2020; and September 30, 2021, which indicate he tested negative for marijuana and other illicit substances. He tested positive for his prescribed pain medication. He also provided a statement of intent to refrain from illegal drug use acknowledging any future use of illegal drugs would be grounds for revoking his security clearance. (Tr. 12, 26; Gov 1 at 1, 5 - 21)

Personal Conduct

Under the personal conduct concern, the SOR alleges Applicant deliberately falsified material facts on a security clearance application, dated April 23, 2019, when he answered “No” in response to “Section 23 – Illegal Use of Drugs and Drug Activity – Illegal Use of Drugs or Controlled Substances – “In the last seven years, have you illegally used any drugs or controlled substances? Use of a drug or controlled substance includes injecting, snorting, inhaling, swallowing, experimenting with or otherwise consuming any drug or controlled substance.” Applicant failed to list his marijuana use between March 2018 and August 2018. (Tr. 28; Gov 3 at 41)

Applicant admits he failed to list his marijuana use on his 2019 security clearance application, but it was not intentional. He said it did not cross his mind. He completed the 2019 security clearance in a hurry. He testified 2019 was not a great year for him and he had a lot of other stuff on his mind. He honestly does not know why he did not list his 2018 marijuana use on the 2019 security clearance application. He did not intend to provide false or misleading information. (Tr. 28-30; Gov 1 at 1) About nine months later, he was asked to submit a security clearance application for a top secret clearance. He completed another security clearance application on January 21, 2020. Applicant listed his marijuana use on this application in response to Section 23. (Tr. 29; Gov 2 at 42)

Financial Considerations

The SOR alleged that Applicant has a history of financial irresponsibility. The SOR alleged 26 delinquent accounts, an approximate total balance of \$71,891. Three of the accounts were for student loans, totaling \$25,697. The remaining 23 debts were consumer/credit card accounts, totaling approximately \$46,194. Applicant purchased a house in 2017. He started to purchase furniture and other items for his house and became financially over-extended. (Tr. 16-18, 32, 52)

In 2019, Applicant entered into an agreement with a debt company to help resolve his accounts. The debt company advised Applicant to stop paying towards his debts. They wanted the debts to go delinquent. They would then negotiate settlement agreements for their clients. Applicant paid the debt company money twice a month. The debt company was to use the money for negotiating settlements on the debts. Applicant did not realize that his debts would default if he did not make payments toward the accounts. After several months, he did not think the debt company was making sufficient progress satisfying his debts. He quit doing business with the debt company in December 2019 and began to resolve the accounts on his own. Some of the accounts were charged off and sent to collection. He said it was his mistake to enter into an agreement with the debt company. He is now slowly working to resolve his delinquent debts. He claims that he is not living outside his means. He was able to pay all of his accounts before he entered into an agreement with the debt company. Over the past year, he has been able to raise his credit score almost 100 points as a result of working to get his debts in good standing. (Tr. 16-18, 32-34, 52; Gov 1 at 2-3)

After the hearing, Applicant consulted with a counselor from a non-profit counseling service (counseling service) on December 20, 2022. He is working with them to create a budget, and a plan to resolve his debts. He entered into a debt management agreement on December 22, 2022. The counseling service was able to locate the current creditors of the debts alleged in SOR ¶¶ 1.b, 1.c, 1.g, 1.h and 1.z. These debts were added to Applicant's payment plan which is to last for a period of 40 months. Applicant agreed to pay a first payment of \$1,142 a month on January 15, 2023, and subsequent payments of \$1,117 due on the 15th of each month. He intends to make payments by monthly allotment from his checking account. (AE B at 1-11) It appears that all of Applicant's unresolved debts were included in the counseling service payment plan.

The status of the debts alleged in the SOR are as follows:

SOR ¶ 3.a: \$7,047 delinquent student loan account placed for collection. Applicant claims this account was a mistake on his credit report. He disputed it online and it was removed from his credit report. During the hearing, he said he would look for the documentation that he disputed this debt. (Tr. 13-14, 30-31; Gov 1 at 3)

SOR ¶ 3.b: \$2,721 charged-off credit card account. During the hearing, Applicant testified he was unable to find the current owner of the account and said he would pay the account if he locates them. After the hearing, the counseling service was able to locate the current creditor and the debt was added to the new payment agreement Applicant has with the counseling service. (Tr. 14, 32-34; Gov 1 at 3; AE B at 2, 11)

SOR ¶ 3.c: \$4,107 charged-off credit card account. During the hearing, Applicant testified he was unable to find the current owner of the account and said he would pay the account if he locates them. After the hearing, the counseling service was able to locate the current creditor and the debt was added to the new payment agreement Applicant has with the counseling service. (Tr. 14, 32-34; Gov 1 at 3; AE B at 2, 11)

SOR ¶ 3.d: \$1,809 store credit card account that was charged off. Applicant claims he paid this debt. He provided proof the debt was resolved in his supplemental response to the SOR. (Tr. 14, 35; Gov 1 at 3, 22)

SOR ¶ 3.e: \$3,752 charged-off store credit card account. Applicant thought he paid this off. He now has a payment agreement to resolve this debt. He provided a copy of the agreement and proof that he made a payment on November 30, 2021. He hopes to have the account paid off in March 2023. (Tr. 14, 36-40; Gov 1 at 3, 24-26) This account is likely included in the new payment agreement Applicant has with the counseling service. (AE B at 11)

SOR ¶ 3.f: \$3,526 charged-off electronic retail store account. Applicant provided proof that he paid off this account on September 9, 2021. (Tr. 14, 41; Gov 1 at 3, 27)

SOR ¶ 3.g: \$690 charged-off outdoor retail store. During the hearing, Applicant testified he was unable to find the current owner of the account and said he would pay the account if he locates them. After the hearing, the counseling service was able to

locate the current creditor and the debt was added to the new payment agreement Applicant has with the counseling service. (Tr. 14, 41; Gov 1 at 3; AE B at 2,11)

SOR ¶ 3.h: \$5,276 charged-off big box retail store account. During the hearing, Applicant testified he was unable to find the current owner of the account and said he would pay the account if he locates them. After the hearing, the counseling service was able to locate the current creditor and the debt was added to the new payment agreement Applicant has with the counseling service. (Tr. 14, 41; Gov 1 at 3; AE B at 2, 11)

SOR ¶ 3.i: \$5,141 account placed for collection. Applicant claims the account is in good standing and he is making payments on this account. The repayment agreement consists of Applicant making monthly payments of \$100.80 through November 9, 2025. Applicant did not provide proof that he was making consistent payments toward this account. (Tr. 15, 41-43; Gov 1 at 3, 28-29) This account is likely included in the new payment agreement Applicant has with the counseling service. (AE B at 11)

SOR ¶ 3.j: \$2,123 delinquent account placed for collection. Applicant claims the account is in good standing and he is making payments on this account. The repayment agreement consists of Applicant making monthly payments of \$172.71 through August 9, 2022. Applicant did not provide proof that this debt was resolved. (Tr. 15, 43; Gov 1 at 3, 30-31) This account is likely included in the new payment agreement Applicant has with the counseling service. (AE B at 11)

SOR ¶ 3.k: \$2,781 delinquent account placed for collection. Applicant claims the account is in good standing and he is making payments on this account. The repayment agreement consists of Applicant making monthly payments of \$102.98 through November 9, 2023. Applicant did not provide proof that he is making consistent payments towards this debt. (Tr. 15, 43; Gov 1 at 3, 32-33) This account is likely included in the new payment agreement Applicant has with the counseling service. (AE B at 11)

SOR ¶ 3.l: \$1,737 delinquent account placed for collection. Applicant claims the account is in good standing and he is making payments on this account. The repayment agreement consists of Applicant making monthly payments of \$51.50 through May 9, 2024. Applicant did not provide proof that he is making consistent payments towards this debt. (Tr. 15, 43; Gov 1 at 3, 34-35) This account is likely included in the new payment agreement Applicant has with the counseling service. (AE B at 11)

SOR ¶ 3.m: \$2,562 delinquent account placed for collection. The account was settled in full on December 15, 2021. (Tr. 15, 44; Gov 1 at 3, 36)

SOR ¶ 3.n: \$1,265 delinquent account placed for collection. The account was settled in full on February 26, 2021. (Tr. 15, 44; Gov 1 at 3, 37)

SOR ¶ 3.o: \$1,295 delinquent account placed for collection. The account was settled in full on September 17, 2021. (Tr. 15, 44; Gov 1 at 3, 38)

SOR ¶¶ 3.p and 3.q: delinquent student loan accounts with respective balances of \$9,130 and \$9,520. Applicant entered into settlement agreements and paid off both accounts on February 28, 2022. (Tr. 15, 44-45; Gov 1 at 3, 39-40; AE B at 19-20)

SOR ¶ 3.r: \$931 charged-off account. Applicant initially had trouble locating this account. He located them and entered into a payment agreement of \$77.66 per month. December 1, 2022 was the first payment. Applicant hopes to pay this debt off in a few months. Status of the debt is that it is in a payment plan. (Tr. 15, 45-46; Gov 1 at 4; AE A at 2; AE B at 20) This account is likely included in the new payment agreement Applicant has with the counseling service.

SOR ¶ 3.s: \$51 delinquent account placed for collection. The account was paid on February 28, 2020. (Tr. 16, 46-47; Gov 1 at 4, 41-42)

SOR ¶ 3.t: \$112 delinquent account placed for collection. The account was paid on October 28, 2020 (Tr. 16, 46-47; Gov 1 at 4, 43-44)

SOR ¶ 3.u: \$216 delinquent account placed for collection. The account was paid on October 31, 2020. (Tr. 16, 46-47; Gov 1 at 4, 45)

SOR ¶ 3.v: \$218 delinquent account placed for collection. The account was paid on October 31, 2020. (Tr. 16, 46-47; Gov 1 at 4, 47-48)

SOR ¶ 3.w: \$484 delinquent account placed for collection. The account was paid on March 13, 2020. (Tr. 16, 46-47; Gov 1 at 4, 49-50)

SOR ¶ 3.x: \$542 delinquent account placed for collection. The account was paid on September 12, 2020. (Tr. 16, 46-47; Gov 1 at 4, 51-52)

SOR ¶ 3.y: \$1,082 delinquent medical account placed for collection. Applicant initially could not identify this account. After the hearing, he was able to locate the debt and offered proof that it was paid in full on March 2, 2021. (Tr. 16, 48; Gov 1 at 4; AE B at 21-22)

SOR ¶ 3.z: \$3,323 delinquent account placed for collection. During the hearing, Applicant testified he was unable to find the current owner of the account and said he would pay the account if he locates them. After the hearing, the counseling service was able to locate the current creditor and the debt was added to the new payment agreement Applicant has with the counseling service. (Tr. 16, 49; Gov 1 at 4)

Applicant's budget lists his monthly income at \$9,557. His current monthly expenses are \$8,447. He has approximately \$1,110 left over each month. The counseling service recommends he cut his monthly expenses to \$8,337 so that he has \$1,220 left over each month. (AE B at 12) Applicant's debt payments were \$340. The counseling service repayment plan increases the debt payments to \$1,142 a month, leaving \$78 left over each month. (AE B at 14)

In December 2022, Applicant completed several online courses pertaining to debt management which were provided by the Federal Deposit Insurance Corporation to include: Managing Debt; Using Credit Cards; Building Your Financial Future; and Borrowing Basics. (AE at 10-13)

Whole-Person Factors

Applicant provided his 2020 and 2021 performance evaluations from his current employer. In 2021, his overall rating was "Meets expectations, good job." In 2021, his overall rating was "Meets expectations, great job." (AE B at 23-30) Applicant provided several favorable character references. Mr. A. is a retired colonel, U.S. Army, with 30 years of experience managing civilian and military personnel working in secure environments. He is the principal operations lead and Applicant has worked on his team for two years. He describes Applicant as "an excellent employee and team member." Applicant is consistently commended for his hard work and willingness to assist soldiers. Mr. A. interacts with Applicant daily while at work. He is aware of the issues with Applicant's clearance and strongly supports Applicant being allowed to keep his security clearance. (AE B at 31)

Several other co-workers provided letters on Applicant's behalf. The co-workers describes Applicant as dedicated, trustworthy, disciplined and security conscious. (AE B at 32). Another co-worker writes Applicant is a person of good moral character who is honest. (AE B at 33). A close friend of Applicant from the Army and a fellow contractor states over the 10 years he has known him, Applicant has always taken part in leadership roles. He describes him as dependable, responsible, honest, and courteous. (AE B at 34)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over arching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(c), 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 as to obtaining 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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).

DOD and Federal Government Policy on Marijuana Use

On October 25, 2014, the Director for National Intelligence, issued a memorandum titled, “Adherence to Federal Laws Prohibiting Marijuana Use” addressing concerns raised by the decriminalization of marijuana use in several states and the District of Columbia. The memorandum states that changes to state and local laws do not alter the existing National Security Adjudicative Guidelines. “An individual’s disregard for federal law pertaining the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations.”

On May 26, 2015, the Director of the United States Office of Personnel Management (OPM) issued a memorandum titled, “Federal Laws and Policies Prohibiting Marijuana Use.” The Director of OPM acknowledged that several jurisdictions have decriminalized the use of marijuana, allowing the use of marijuana for medicinal purposes and/or for limited recreational use but states that Federal law on marijuana remains unchanged. Marijuana is categorized as a controlled substance under Schedule I of the Controlled Substances Act. Thus knowing or intentional marijuana possession is illegal, even if the individual has no intent to manufacture, distribute, or dispense marijuana.

Guideline H, Drug Involvement

The security concern relating to the guideline for Drug Involvement is set out in AG & 24:

The illegal use of controlled substances, to include the misuse of prescription drug 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.

The guideline notes several disqualifying conditions that could raise security concerns. I find the following drug involvement disqualifying conditions apply to Applicant's case.

AG ¶ 25(a) any substance misuse; and

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

The SOR alleges and Applicant admits he used marijuana on at least 10 occasions between March 2018 and August 2018. There is sufficient evidence to conclude that Applicant used and possessed marijuana during this six-month period. AG ¶ 25(a) and AG ¶ 25(c) apply.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline H, Drug Involvement. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005))

Guideline H also includes examples of conditions that could mitigate security concerns arising from drug involvement. The following mitigating conditions potentially apply to the Applicant's case:

AG ¶ 26(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; and

AG ¶ 26(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; and (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

AG ¶ 26(a) applies because four years have passed since Applicant's last involvement with marijuana. While Applicant's illegal use of marijuana raises questions about his judgment, he stopped using marijuana in August 2018.

AG ¶ 26(b) applies because Applicant acknowledged his illegal drug use and signed a statement of intent indicating he will not use marijuana in the future. He acknowledged any future illegal use could result in the revocation of his security clearance.

Overall, Applicant met his burden to mitigate the security concerns raised under Guideline H, Drug Involvement.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶15:

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 the national security or adjudicative processes.

The following disqualifying conditions potentially apply to Applicant's case:

AG ¶ 16(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities

Applicant omitted his 2018 marijuana use on his April 2019 security clearance application. He claims that his past marijuana use did not cross his mind and that he rushed when he completed the first security application. On his January 2020 security clearance application, Applicant listed using marijuana on ten occasions between March 2018 and August 2018. I find his assertion that he forgot about this marijuana use when completing his earlier security clearance application lacks credibility. AG ¶ 16(b) applies.

Under Guideline E, the following mitigating conditions potentially apply in Applicant's case:

AG ¶ 17(a) the individual made prompt, good-faith efforts to correct the omission, concealment or falsification before being confronted with the facts;

AG ¶ 17(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 is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

AG ¶ 17(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

AG ¶ 17(a) partially applies because Applicant revealed his illegal marijuana use on his 2020 security clearance application. This occurred nine months after he completed his April 2019 application, so his disclosure cannot be considered "prompt." However, he revealed his marijuana use before being confronted about it.

AG ¶ 17(c) applies because Applicant acknowledged he omitted his illegal marijuana use on his April 2019 security application. I took into consideration that Applicant he used marijuana to alleviate his shoulder pain, but do not consider it an excuse for illegal drug use. However, Applicant has not used marijuana in over four years. He signed a statement of intent to refrain from illegal marijuana use in the future acknowledging any future use would result in the revocation of his security clearance. It is unlikely that Applicant will repeat this conduct in the future.

AG ¶ 17(e) applies because Applicant fully disclosed his marijuana use. As a result, he reduced his vulnerability to exploitation, manipulation, or duress.

Personal Conduct Security Concerns are mitigated.

Guideline F: Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out 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.

Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are relevant to Applicant's case include:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has a long history of financial problems. He incurred 26 delinquent debts with an approximate total balance of over \$71,000. AG ¶¶ 19(a) and 19(c) apply to Applicant's case.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

The Government's substantial evidence and Applicant's admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

AG ¶ 20 includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

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

AG ¶ 20(a) does not apply because Applicant's financial problems are ongoing. Applicant is working on resolving these delinquent accounts.

AG ¶ 20(b) partially applies because Applicant's financial situation was adversely affected by his separation from his wife and likely pending divorce. These circumstances were beyond Applicant's control and adversely affected his ability to pay his bills. However, this mitigating condition is given less weight because Applicant has not demonstrated he acted responsibly under the circumstances. Applicant over-extended himself after purchasing a new house in 2017. For this reason, AG ¶ 20(b) is given less weight.

AG ¶ 20(c) applies. Applicant initially entered into an agreement with a debt company who failed to make progress resolving the debts to Applicant's satisfaction. He terminated that agreement and resolved some of the debts on his own. In December 2022, he entered into a counseling agreement with CCCS, a legitimate credit counseling service. Not all of Applicant's debts are resolved, but CCCS is assisting Applicant with resolving his remaining debts.

AG ¶ 20(d) applies towards the debts alleged in SOR ¶¶ 3.d, 3.f, 3.m – 3.q, and 3.s – 3.y. Applicant provided proof that he resolved these accounts. He is attempting to resolve his remaining outstanding accounts. He first sought the assistance with a debt company that did not really help him. In December 2022, he sought the assistance of CCCS. They counseled Applicant on his finances and budget and drew up a repayment agreement for Applicant to follow to resolve his remaining delinquent debts. Applicant is making a good-faith effort towards resolving his delinquent debts. It will likely take a few years, but Applicant met his burden of proof to mitigate the concerns under Guideline F.

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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered Applicant's performance evaluations and favorable character references. I also considered his active duty service in the United States Army.

I find Applicant mitigated the security concerns under Guideline H because it has been more than four years since he last used marijuana and he signed a statement of intent to no longer use marijuana in the future.

While Applicant's failure to list his 2018 marijuana use on his April 2019 security clearance application raised a concern under Personal Conduct about his judgment and trustworthiness, he provided full disclosure about his marijuana use on a January 2020 security clearance application. While not essentially prompt, he disclosed his marijuana use before being confronted about it. The security concerns under Personal Conduct are mitigated.

As the debts in the SOR show, Applicant is financially over-extended. He has worked on resolving his delinquent debts for several years now. He initially entered into an agreement with a debt company who Applicant felt was not helpful in resolving his accounts. He started to resolve the accounts on his own. In December 2022, he consulted CCCS who helped him prepare a budget and repayment plan that includes his remaining unresolved accounts. While it will take several years to resolve these debts, Applicant demonstrated he is making a good-faith effort to resolve his debts.

I considered the potentially disqualifying and mitigating conditions as well as the facts and circumstances surrounding this case. All security concerns are mitigated.

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline F:	FOR APPLICANT
Subparagraphs 3.a - 3.z:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ERIN C. HOGAN
Administrative Judge