DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 21-01820
	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government:
Tara Karoian, Esquire, Department Counsel

For Applicant:
Pro se

March 29, 2023

_____

Decision

_____

GLENDON, John Bayard, Administrative Judge:

Statement of the Case

Applicant submitted his most recent Electronic Questionnaire for Investigations Processing (e-QIP) on March 7, 2021. On April 1, 2022, the Department of Defense Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines E (Personal Conduct), H (Drug Involvement and Substance Misuse), and F (Financial Considerations). This action was taken under Executive Order 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 Adjudicative Guidelines (AG) effective within DoD after June 8, 2017.

Applicant submitted an answer to the SOR, dated June 8, 2022, (Answer) with 21 documentary attachments. The documents attached to his Answer are identified herein as Answer Att. 1 through 21. He also requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On August 2, 2022, Department Counsel was prepared to proceed. DOHA assigned the case to me on August 16, 2022, and issued a Notice of Video Teleconference Hearing on September 12, 2022, scheduling the hearing for October 3, 2022. On September 26, 2022, Applicant requested a continuance to retain an attorney to represent him in this matter. I granted his request and gave him two weeks to retain an attorney. Applicant's motion and the subsequent email thread ending with my granting of his motion have been marked as Hearing Exhibit I. Applicant did not respond. After about three weeks, Department Counsel requested by email that a new hearing date be set. On October 14, 2022, I responded by email and set the hearing for November 4, 2022. This email correspondence is attached as Hearing Exhibit II. On October 17, 2022, DOHA issue a second Notice of Video Teleconference Hearing rescheduling the hearing for November 4, 2022. Applicant did not advise further about hiring an attorney, and he represented himself at the hearing. The hearing proceeded as rescheduled.

The Government offered eight exhibits marked as Government Exhibits (GE) 1 through 8. GE 1, 2, and 4-8 were admitted without objection. Applicant objected to GE 3, which are business records of Applicant's former employer (Company A), which had terminated him in December 2020. I overruled Applicant's objection and advised that the records are admissible evidence and will be given the weight they deserve in light of all of the record evidence, including Applicant's testimony about the records and the circumstances regarding the termination of his employment with Company A. (Tr. at 17-20.)

Applicant testified on his own behalf. I kept the record open until December 5, 2022, to give Applicant the opportunity to submit additional documentary evidence in support of his testimony and to provide a written response to the Government's SOR amendment (Amendment), discussed below. (Tr. at 66.)

On December 5, 2022, Applicant filed a motion asking that he have until to December 19, 2022, to provide post-hearing documents and to respond to the Government's SOR Amendment. I granted Applicant's motion and set a new date of December 23, 2022. Applicant's motion and my ruling on his motion have been marked as Hearing Exhibit III. Applicant timely submitted 23 exhibits marked as Applicant Exhibits (AE) A through W. He provided with his exhibits a lengthy restatement of his testimony (Post-Hearing Statement). He also provided a written response to the Amendment (Amendment Response). His exhibits were admitted without objection. In cases where an Answer Att is duplicated by an Applicant Exhibit, I have only referenced herein the Applicant Exhibit. The record closed on December 23, 2022. DOHA received the transcript of the hearing (Tr.) on November 11, 2022.

Motion to Amend the SOR

During the hearing, Department Counsel moved to amend Paragraph 1 of the SOR pursuant to Paragraph 17 of the Additional Procedure Guidance of the Directive as follows:

> b. You falsified material facts on an Electronic Questionnaires for Investigations Processing (e-QIP), executed by you on or before March 7, 2021, in response to "Section 13A – Employment Activities. 2. [Company A] **Reason for Leaving**. Provide the reason for leaving the employment activity, you responded "Presented with the opportunity to work again for the Navy as a … Engineer" **Reason for Leaving Question** for this employment have any of the following happened to you **in the last seven (7) years?**
>
> - Fired
> - Quit after being told you would be fired
> - Left by mutual agreement following charges or allegations of misconduct
> - Left by mutual agreement following notice of unsatisfactory performance
>
> You answered "No" to this question, and thereby deliberately failed to disclose that you were fired [by Company A] and/or left [Company A] by mutual agreement following charges or allegations of misconduct.

Applicant objected to Department Counsel's motion. I overruled his objection and granted Department Counsel's motion to amend. Immediately after the hearing Department Counsel, at my request, submitted by email the wording of the SOR Amendment so that it could be included in the record in written form. Her email has been marked as Hearing Exhibit IV. I kept the record open, initially for about one month to give Applicant an opportunity to present evidence and argument relevant to the additional allegation. As noted, I extended the time an additional 18 days following Applicant's motion for an extension of 14 days. *See* ISCR 02-23365 at 5 (App. Bd. Mar. 22, 2004) ("[A]s long as there is fair notice to an applicant about the matters that are at issue in his case, and the applicant has a reasonable opportunity to respond, a security clearance case should be adjudicated on the merits of the relevant issues and should not be overly concerned with pleading niceties."); *see also* ISCR Case No. 05-05334 at 4 (App. Bd. Jan. 10, 2007) ("The government and the Judge are free to amend the SOR at any time, but must permit Applicant time and an opportunity to respond to the adverse reason upon which any adverse decision is based."). As noted, Applicant timely submitted the Amendment Response. (Tr. at 61-67; SOR Amendment; Amendment Response.)

Findings of Fact

Applicant is 38 years old, married, and has four minor children. He earned a bachelor's degree in 2007. He is currently employed by a private company, and he has been offered a position as an engineer with a Government contractor, which is sponsoring him to apply for a security clearance. He has held a security clearance in the past, and he is seeking to renew his eligibility for a security clearance in relation to his prospective employment. (Tr. at 12-20.)

Paragraph 1 (Guideline E, Personal Conduct)

In this paragraph the Government alleged that Applicant engaged in conduct involving questionable judgment, lack of candor, dishonesty, or an unwillingness to comply with rules and regulations, which raise questions about his reliability, trustworthiness, and ability to protect classified or sensitive information. The details of the allegations are as follows:

SOR ¶ 1.a. December 2020 Employment Termination. The Government alleged that Applicant was terminated from his employment in December 2020 after he tested positive for THC during a random drug test on October 20, 2020.

In January 2020, Applicant began working for Company A in State 1. He claimed he was surprised that he tested positive for THC in October 2020 because he does not use marijuana or any cannabis product. He testified that a few days prior to the drug test, he had experimented using CBD oil for the first time. He had migraine headaches, and a co-worker, or "a few co-workers," had suggested that CBD oil had helped her/them with migraines. He used the CBD oil two or three times during the week prior to the drug test, including the night before the test. He concluded that the CBD oil must have contained THC. He claimed he was unaware that the CBD oil contained THC when he used it. (Tr. at 26-33, 67-68.)

Applicant testified that his wife had purchased the CBD oil for her medical condition when they lived in State 2. In that state, marijuana and CBD oil with THC could be legally purchased. He testified that he was aware that some CBD oils sold in State 2 contain THC. When Applicant and his family moved from State 2 to State 1 in about August 2019, Applicant claimed that the CBD oil was in a box that moved with them. He claimed that after his positive drug test he inspected his wife's bottle of CBD oil. The label provided no indication that the CBD oil contained any THC. (Tr. at 26-33, 67-68.)

In support of his case, Applicant submitted a letter from his long-time psychiatrist in State 2. The psychiatrist wrote that he believed Applicant's explanation for the positive drug test. He also wrote that Applicant was a trustworthy and compliant patient. He provided a comment that directly contradicted Applicant's testimony of his history with CBD oil. He stated:

> Prior to moving to [State 1] he reported to me in an office visit that he had some success with CBD for his migraines that had worsened when his son was apparently molested in the school he was attending.

AE W at 1-2. The psychiatrist also wrote, "Apparently the CBD oil he had purchased in [State 2] was not pure CBD and had some THC in it as well." AE W at 1.

Applicant explained to his employer over the phone that he did not use marijuana and that the test results were due to his accidental ingestion of THC when he used CBD oil not knowing that the oil contained THC. Applicant claimed that his employer was not interested in the details of his explanation for his positive drug test. Applicant did not offer to show his employer the CBD oil bottle or even to send his supervisor a picture of the label as evidence of his lack of knowledge about the contents of the oil. He testified that he threw the bottle away because he did not want to keep it in his home. (Tr. at 26-35. 67-68.)

After the positive drug test, Company A put Applicant on unpaid administrative leave, but agreed to give him the opportunity to remain with the company by signing a Last Clear Chance Agreement (LCCA) (AE A). Under the LCCA Applicant was required to complete substance abuse counseling. He met with his employer's drug counselor and explained why he thought he tested positive for THC. The counselor accepted Applicant's explanation and issued a letter to Company A, dated November 2, 2020 (AE B), in which the counselor commented that he had provided drug counseling and concluded that no formal drug treatment or additional counseling was necessary. The letter stated that Applicant can return to work once he provides a negative drug test result to Company A. (Tr. at 36-38; AE A; AE B.)

Applicant's supervisor repeated that he could return to work once he provided evidence of a negative drug test. The supervisor instructed Applicant that he would then take a second test at the on-site medical facility Company A used for drug tests. Applicant claimed that the required protocol was not really laid out for him, but then he testified about exactly what the LCCA and his supervisor required. (Tr. at 36-38.)

Applicant purchased an at-home drug test that produced a pass or fail test result. Company A rejected the test result and insisted that Applicant go to a testing facility and take a controlled drug test. He claimed he did not know that his employer would reject a home test. He claimed the process "was really confusing." He wanted his employer to tell him where to get tested, and the company's response was for him to find a testing facility using Google, which he eventually did. In his testimony, he repeatedly claimed that it was

complicated to get tested in his rural environment. Nine days after the November 2, 2020 letter, he finally found a local testing place, but it was closed for Veteran's Day. He went to another local testing facility and was tested. A mistake was made, and the specimen label was a mismatch. (AE D) The test needed to be redone. He retested and received a negative drug test on November 25, 2020 (AE E). On December 10, 2020, he wrote to his supervisor at Company A and asked if the company had everything it needed (AE F). (Tr. at 33-47, 49, 53-55; AE A through AE F; Post-Hearing Statement at 2.)

After all of the explanations for his delays, Applicant agreed he could have handled finding a testing facility better. He kept repeating how difficult it was because he lived in a rural area, but he also acknowledged he could have driven to a city and been tested there. He testified that during the intervening time, he bought several more at home drug tests because he did not want to have a surprise and to get a bad test result in a controlled lab test. (Tr. at 41-43.)

Company A provided the Government a different set of facts from which Company A concluded that Applicant was not being truthful when he provided information to his supervisor, the Company A medical facility, and during a subsequent investigation. The difference had to do with the timelines Applicant provided to the company about a complicated history of his attempts to get a simple drug test completed in a timely fashion. Company A was also concerned about inconsistent statements Applicant made during a phone interview with Applicant on or about November 18, 2020, regarding his attempts to obtain a drug test. Applicant described this interview "as more of an interrogation that I was blindsided with" and was unprepared to answer the questions of the representatives of Company A. The questions dealt with his attempts to get drug tested during the 16-day period from the drug counselor's November 2, 2022 letter to November 18, 2022. He provided one timeline on the phone and then a second timeline in writing. (GE 3 at 1, 5, 12-13.)

In Applicant's Post-Hearing Statement, he admitted that he misspoke during his interview with Company A about the timeline of his activities during the preceding two weeks. He blamed his errors on his lack of opportunity to prepare for the interview. Company A terminated Applicant by phone on or about December 14, 2020, and the parties signed a Separation Agreement, dated January 12, 2021. (GE 3 at 1, 5, 11-13, 22-28; Post Hearing Statement at 4.)

Applicant's testimony about his attempts to be tested in November 2020 was similarly confusing and unconvincing, creating the overall impression that Applicant was attempting to delay his drug test in the first half of November 2020 after having tested positive for THC on October 20, 2020. His testimony lacked credibility in all key respects.

SOR ¶ 1.b. Falsification in March 2021 e-QIP; Amendment to the SOR. Applicant failed to disclose in his e-QIP that Company A terminated him in December 2020, about three months earlier. Section 13A of the e-QIP asked for Applicant to provide the "Reason for Leaving" his employment at Company A. He misleadingly wrote in

response: “Presented with the opportunity to work again for the Navy as a [specific position.]” A follow-up question in the e-QIP asked with respect to this employment, “Have any of the following happened to you[:] “Fired; Quit after being told you would be fired; Left by mutual agreement following charges or allegations of misconduct; or Left by mutual agreement following notice of unsatisfactory performance?” Applicant falsely answered this question, “No.”

Applicant testified that his errors in responding to the two e-QIP questions were “inadvertent.” He explained that his comment in the e-QIP about the job opportunity with the Navy was merely draft language he used as a “placeholder” in the form while he consulted with his attorney about how to respond to the question. The attorney did not respond to Applicant’s email. He signed and submitted the e-QIP with the draft language unchanged. He testified that he was impatient to get the application submitted and made a mistake. He did not satisfactorily explain his negative answer to the second question about being fired. (Tr. at 55.)

In his Post-Hearing Statement, he provided another reason for wanting to discuss with an attorney his response to this question. He claimed that he felt he needed legal advice on whether he could disclose the termination under the terms of his Severance Agreement, which included a confidentiality clause. The confidentiality clause in Section 8 of the Severance Agreement contains exceptions, including “anyone having a need to know the contents of the Agreement[.]” Also, the last paragraph of the Confidentiality section of the Agreement makes it clear that Company A did not want Applicant to tell anyone he received a financial package as part of his severance. The protection sought by Company A in the Confidentiality Section was not addressed to the question whether Applicant had been terminated, since the confidentiality language was in a severance agreement. Among all of the numerous documents provided by Applicant both before and after the hearing, he did not include his email to his attorney. Also, Applicant failed to mention his termination from Company A during his initial security interview on April 28, 2021. When questioned about his termination in a follow-up interview, he provided this same excuse to the Government investigator as he gave at the hearing regarding the Navy position language just to serve as a placeholder while he completed the rest of the form. (GE 2 at 3-5, 5-6; Post-Hearing Statement at 5.)

Applicant also maintains that he was never told by Company A why he was terminated. Accordingly, he argued in his Post-Hearing Statement that “I was not under the impression that my severance with [Company A] [was] a result of being fired and/or left by mutual agreement following charges or allegations of misconduct.” He claims his “No” answer to the e-QIP question regarding the end of his employment with Company A was accurate. This information is contradicted by his acknowledgement in his follow-up security interview on June 25, 2021. In that interview he discussed his termination by Company A. He advised the Government investigator that he was called on December 14, 2020, by a Company A human resources representative and advised that he was being terminated. He reported that he was told that his termination was related to incorrect

dates and information he provided to the company regarding his drug tests in November 2020. (GE 2 at 5, 7; Post-Hearing Statement at 6; Amendment Response at 2.)

Paragraph 2 (Guideline H, Drug Involvement and Substance Misuse)

The Government alleged in this paragraph that Applicant's illegal drug use raised questions about his reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raised questions about his ability or willingness to comply with laws, rules, and regulations. The details regarding this allegation are as follows:

SOR ¶ 2.a. Positive Drug Test. The Government alleged that in or about October 2020, Applicant tested positive for THC in a random employer-administered urinalysis. Applicant admitted this allegation in his Answer with an explanation about his use of his wife's CBD oil without knowing that it contained THC. He explained that the presence of THC in his body at the time of the drug test was accidental and merely an "isolated Incident." (Answer at 3-4.)

Paragraph 3 (Guideline F, Financial Considerations)

The Government alleged in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. The SOR identified six past-due debts that have been charged-off or referred to collection. The debts total about $63,000. In his Answer, Applicant denied each of the allegations, but asserted that two of the debts are being repaid through a payment plan arranged by a third party, three of the debts are under negotiations, and one debt is disputed due to a mismatch of the debt amounts. (Answer at 7.)

In or about 2018 Applicant and his wife attempted to create a start-up, defense-contracting business. They were set up to commence their business when their three-year-old son was molested by his preschool teacher. The family experienced a "nightmare" seeking counseling for their son and the expense of his treatment. The therapist did not accept insurance coverage, so Applicant had to pay the medical bills. Applicant took time off from work for a period (March to November 2019) to take care of his family. He moved his family from State 2 to a remote part of State 1 to help his family heal from their trauma. Without Applicant's income, he and his wife paid their expenses with their credit cards and incurred medical bills and other debts that are alleged in the SOR. Less than half of the debts were incurred in connection with the start-up business and the rest of the debts were incurred while Applicant was not working. (Tr. at 70-76, 91-92.)

In June 2019, Applicant sought debt counseling from a credit-counseling company (CCC). He was advised to stop paying his debts so that CCC could negotiate payment plans with the creditors. He followed this advice, and the debts listed in the SOR were

included along with others in a debt-settlement program undertaken by CCC (the Program). Applicant has been making payments of about $940 per month into the Program for about 41 months. (Tr. at 76-83, 92, 94; Answer.)

The current status of the debts alleged in paragraph 3 of the SOR is as follows:

SOR ¶ 3.a. Credit-Card Account Charged Off in the Approximate Amount of $5,954. Applicant defaulted on this account in 2019. In June 2019, Applicant hired CCC, which advised him to stop paying this account along with others, including the five other accounts alleged in the SOR. Applicant is currently making payments on this debt through the Program. This debt is being resolved. (Answer at 7; Tr. at 83-84, 96-97, 101; GE 1 at 50-51; GE 4 at 3; GE 5 at 3; AE Q at 2.)

SOR ¶ 3.b. Unsecured-Loan Account Charged Off in the Approximate Amount of $17,444. Applicant opened this account in July 2018 and defaulted on this account in November 2019. The debt is listed in the CCC's December 2022 status report under a different collection agency's name. The report evidences that Applicant is currently making payments on this debt through the Program. This debt is being resolved. (Answer at 7; Tr. at 84-85; GE 1 at 51; GE 4 at 7, 10; AE Q at 2.)

SOR ¶ 3.c. Credit-Card Account in Collection in the Approximate Amount of $5,870. Applicant defaulted in paying this account in 2019. In his Answer, Applicant correctly stated that the amount alleged in the SOR is significantly different than the past-due amounts shown in the Government's credit reports. It appears from the Answer that he is disputing this allegation. However, the CCC's December 2022 status report reflects that the amount of this debt is $10,787, which is the correct amount according to the credit reports, and that the debt was paid in the settlement amount of $4,316. This debt is resolved. (Tr. at 85-86, 96-97, 99; GE 4 at 8; GE 5 at 7; GE 6 at 3; GE 8 at 1; AE Q at 1.)

SOR ¶ 3.d. Credit-Card Account in Collection in the Approximate Amount of $9,179. Applicant defaulted in paying this account in 2019. This debt and the debts alleged in SOR ¶¶ 3.e and 3.f, all owed to the same creditor, are to be resolved in the future by CCC. These debts will be resolved by CCC in the future under the Program. (Tr. at 86-87; GE 4 at 11; GE 5 at 11; AE Q at 2.)

SOR ¶ 3.e. Credit-Card Account in Collection in the Approximate Amount of $16,851. Applicant defaulted in paying this account in 2019. See discussion in SOR ¶ 3.d, above. (Tr. at 86-87; GE 4 at 11; GE 5 at 11; AE Q at 2.)

SOR ¶¶ 3.f. Credit-Card Account in Collection in the Approximate amount of $7,238. Applicant defaulted in paying this account in 2019. See discussion in SOR ¶ 3.d, above. GE 4 at 13; GE 5 at 13; AE Q at 2.)

The December 2022 CCC status report indicates that five of Applicant's debts totaling about $41,000 have been paid through the Program. The status report also shows

that settlements of three of the debts totaling about $30,000 are in the process of being paid every month, and that four debts owed to the creditor, three of which are listed in SOR ¶¶ 3.d, 3e, and 3f, totaling about $45,000 are to be negotiated and settled with payments in the future. (AE Q at 1-2.)

Whole-Person and Other Mitigation Evidence

Applicant provided six character-reference letters with his Answer (Answer Att. 7 through 12) and he resubmitted the same letters with his Post-Hearing Submission (AE H through M). The letters were prepared by friends and former co-workers. One letter was written by a retired Navy lieutenant commander, and another was written by a retired Navy command master chief. They all praise Applicant's character. The following are sample comments about Applicant's character: "impeccable integrity;" "devoted family man;" "passionate and driven person;" "trustworthy and deserving of a position in defense;" "an intelligent, honest, motivated and reliable person;" "friendly, patient and outgoing;" "reliable, loyal, trustworthy;" "competent;" "patriot;" "hard working;" "strong moral fiber;" "dedicated beyond reproach;" and "absolutely deserving of the security clearance he seeks." (AE H through M.)

As noted, Applicant also provided a letter from his psychiatrist in which the writer expressed his view that he believed Applicant ingested THC unknowingly with CBD oil. He treated Applicant for ten years and always found him to be trustworthy. He also believes that Company A treated Applicant unfairly by terminating him. (AE W.)

Applicant also submitted copies of 13 awards that he received from the Navy and his former employer in State 2 for his excellent work. In addition, he provided a statement of intent in which he committed to never use illegal drugs and agreed to the automatic revocation of his security clearance in the event that he broke his commitment. He also submitted a June 2022 credit report and a budget of his income and expenses. (AE N; AE U; AE V.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk 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 or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 (Guideline E, Personal Conduct)

The security concerns relating to the guideline for personal conduct are set out in AG ¶ 15, which states:

> 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.

AG ¶ 16 describes three conditions that could raise security concerns and may be disqualifying in this case:

> (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;
>
> (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 individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:
>
> > (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;
> > (2) any disruptive, violent, or other inappropriate behavior;
> > (3) a pattern of dishonesty or rule violations; and
> > (4) evidence of significant misuse of Government or other employer's time or resources; and
>
> (f) violation of a written or recorded commitment made by the individual to the employer as a condition of employment.

The record evidenced established that Applicant was terminated by Company A for his unreliability and lack of candor. Applicant was well aware that his interview with representatives of Company A on November 18, 2020, did not go well, and he could not get his timeline of his drug-testing attempts straight or consistent. He was terminated for not properly complying with the LCCA and for not being honest about his attempts to be drug tested in November 2020. The record evidence establishes the potentially disqualifying condition set forth in AG ¶¶ 16(d) and 16(f).

The evidence also established that Applicant deliberately falsified information in the e-QIP about his termination from Company A. Applicant offered a complicated explanation that lacked credibility about his e-QIP response to the employment termination question being a temporary "placeholder" while he unsuccessfully sought legal advice. He also claimed that he forgot to change his response to the question to the truth before submitting the e-QIP with patently false, recent information. On this point, I

note he could have used the truth as a "placeholder" while he sought advice on how he should respond and avoided the risk of potentially submitting a false statement to the Government. As noted, he did not submit a copy of his email to his attorney to substantiate his claim that he was seeking advice about how to respond to the e-QIP question.

Overall, I found Applicant's demeanor to be lacking sufficient credibility to support all of his claims to make them believable, honest, and true. His testimony about his actions did not appear to be honest. I note that Company A also found that Applicant lacked candor in his descriptions about his delayed efforts to take a drug test. In addition, his claim that he did not believe he had been terminated simply made no sense and was contradicted by his own admissions to the Government investigator. The record evidence and my credibility assessment of Applicant's testimony establish the disqualifying condition in AG ¶ 16(a).

The guideline includes two conditions in AG ¶ 17 that could mitigate the security concerns arising from Applicant's personal misconduct and falsifications in the e-QIP:

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

Applicant has not carried his burden to establish either of the above mitigating conditions. The employment termination alone could be considered isolated conduct, even though he was terminated for lack of candor. However, the falsification in his e-QIP renders the termination even more credible. The falsification occurred just a few months after Applicant's termination. His dishonesty on two occasions along with his general pattern of dishonesty in his testimony render it likely that future untrustworthy conduct will occur. In fact, he did not disclose his employment termination during his initial security interview. This renders AG ¶ 17(a) inapplicable. Applicant's overall actions cast doubt on hiss reliability, trustworthiness, and good judgment. He has not mitigated security concerns under this guideline. Paragraph 1 is found against Applicant.

Paragraph 2 (Guideline H, Drug Involvement and Substance Misuse)

The security concerns relating to the guideline for drug involvement and substance misuse are set out in AG ¶ 24, which reads as follows:

> 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.

AG ¶ 25 describes one condition that raises security concerns and may be disqualifying in this case:

(a) any substance misuse (see above definition); and

(b) testing positive for an illegal drug.

Applicant tested positive in October 2020 for THC. He claims that his ingestion of THC was unknowing because he was using a bottle of CBD oil purchased by his wife in State 2 for treatment of her medical condition. He also claims that he first used CBD oil shortly before his drug test. Applicant's psychiatrist contradicted Applicant on both points. Moreover, Applicant's demeanor in presenting his claim that his THC exposure was accidental and that he was so unlucky as to be tested for drug use during the same week lacked credibility. The fact that he discarded the container of CBD oil after his positive drug test was not the action an innocent person would take. The container was his best evidence to support his claim with his employer that he unknowingly ingested THC. I conclude that Applicant ingestion of THC was not accidental. The above disqualifying conditions are established.

I note that a continuous evaluation report in the record, dated June 18, 2020 (GE 7), reflects that Applicant held national security eligibility at that time. The SOR does not allege that Applicant used illegal drugs while holding a security clearance, and the record is undeveloped as to whether Company A was a U.S. Government contractor and had assumed responsibility for Applicant as a clearance holder. Accordingly, I make no findings on the issue of whether Applicant used an illegal drug while holding a clearance.

The evidence of Applicant's illegal drug use shifts the burden to Applicant to mitigate the security concerns raised by his conduct. The guideline includes two conditions in AG ¶ 26 that could mitigate the security concerns arising from Applicant's alleged drug involvement and substance misuse:

> (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; and

(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome the 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.

Applicant's drug use occurred only about two and one-half years ago. Due to Applicant's false reporting of the frequency of his use of CBD oil with THC, it cannot be concluded that his drug use was infrequent or unlikely to recur. His psychiatrist reported that Applicant had been purchasing and using CBD oil since before he moved from State 2 to State 1 in 2018. Lastly, Applicant's fabrication of a story that his wife purchased the CBD oil that he used in October 2020 casts doubt on his current reliability, trustworthiness, and judgment. AG ¶ 26(a) is not established.

AG ¶ 26(b) is partially established in that Applicant provided a written statement of intent affirming that he intends to abstain from all drug involvement and acknowledging that any future involvement or misuse is grounds for revocation of his national security eligibility. This mitigating condition, however, is only partially established because Applicant does not acknowledge that he knowingly used an illegal controlled substance. Overall, the evidence is insufficient to permit a conclusion that Applicant has mitigated the security concerns raised by his use of an illegal drug. Paragraph 2 is found against Applicant.

Paragraph 3 (Guideline F, Financial Considerations)

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes the following two conditions that could raise security concerns and may be disqualifying in this case:

(a) inability to satisfy debts; and

(c) a history of not meeting financial obligations.

As of the date of the SOR, Applicant owed approximately $63,000 for six past-due debts. These debts establish the foregoing disqualifying conditions and shift the burden to Applicant to mitigate those concerns.

The guideline includes the following four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties:

(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, or 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.

All of the above mitigating conditions have been fully established. Applicant incurred a number of debts arising out of the most unfortunate of circumstances, the sexual abuse of his child by a nursery school teacher. This created chaos in the family's financial plans including disrupting Applicant's business plan with his wife to start a U.S. Government contracting business and forcing Applicant to relocate to another state. He has acted responsibly under the circumstances.

About three years before the issuance of the SOR, Applicant entered into an agreement with CCC to resolve his outstanding debts. Since then, CCC has shown that it is performing its job of negotiating and paying off Applicant's debts as promised in its

contract with him. Applicant has honored his commitment to make monthly payments to CCC to fund the settlements. He is adhering to a good-faith effort to resolve the six debts alleged in the SOR and a number of other debts. There are clear indications that Applicant's financial problems are being resolved. Applicant's debts arose under highly unusual circumstances and are unlikely to recur. His actions do not cast doubt on his reliability, trustworthiness, or good judgment. Overall, Applicant has fully established mitigation of the security concerns raised under this guideline. Paragraph 3 is resolved in favor of Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility 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(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), the ultimate determination of whether to grant national security eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Further comment is warranted. Applicant repeatedly testified with excuses for his conduct that lacked credibility. His testimonial demeanor also lacked credibility, and his testimony about his actions at times made no common sense. His termination by Company A was due to his unreliable behavior. He deliberately provided false information in the e-QIP regarding the only security sensitive issue raised by his responses to the e-QIP. Overall, the record evidence leaves me with questions and doubts as to Applicant's suitability for national security eligibility and a security clearance.

Formal Findings

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

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

Conclusion

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

JOHN BAYARD GLENDON
Administrative Judge