



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



In the matter of:)	
)	
)	ISCR Case No. 20-02971
)	
Applicant for Security Clearance)	

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: Daniel Conway, Esq.

05/09/2023

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations, and Guideline J, criminal conduct. He mitigated the security concerns under Guideline H, drug involvement and substance misuse. Eligibility for access to classified information is denied.

Statement of the Case

On February 4, 2021, the Department of Defense issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F, financial considerations, Guideline H, drug involvement and substance misuse, and Guideline J, criminal conduct. The action was taken 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 adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on February 16, 2021, and he requested a hearing before an administrative judge. The case was scheduled for August 10, 2021. Applicant moved and a change of venue was requested. The hearing was canceled and rescheduled for July 27, 2022. There was a question regarding Applicant's sponsorship and the rescheduled hearing was canceled and set for January 25, 2023. Applicant then requested a continuance to hire an attorney who requested a further continuance, which was granted. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 13, 2023, scheduling the hearing for March 1, 2023. I convened the hearing as scheduled. The Government offered exhibits (GE) 1 through 7. There were no objections, and the exhibits were admitted into evidence. Applicant offered Applicant Exhibits (AE) A and B, which were admitted without objection. The record was held open until March 8, 2023, to permit Applicant an opportunity to provide additional documents. He provided AE C through F, which were admitted without objection and the record closed. DOHA received the hearing transcript on March 9, 2023.

Findings of Fact

Applicant admitted all of the allegations in the SOR with explanations. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 36 years old. He married in 2005 and divorced in 2007. There were no children from the marriage. He remarried in 2015 and divorced in 2019. He has an eight-year-old child from the marriage. He has custody of the child. He is in a cohabitation relationship. He served in the military from 2004 to 2011 and was honorably discharged. Applicant was employed from September 2019 until June 2021. He has been employed by a federal contractor since July 2021. (Tr. 43-46, 70-71,74; GE 1)

In July 2016, Applicant was charged with possession of a controlled substance, Oxycodone. Applicant held a security clearance at the time. He testified that he did not have access to classified information, and there is no evidence to the contrary. (Tr. 165; GE 2)

In February 2017, Applicant was interviewed by a government investigator. In October 2019, Applicant completed a security clearance application (SCA). He was reinterviewed in November 2019. Applicant was issued government interrogatories and he was advised to make corrections or additions to the summary of interviews. He reported updated information about criminal charges and an updated credit report. In December 2020, he swore to the accuracy of the interviews. (GE 2)

During his initial interview, Applicant was questioned about his July 2016 arrest and told the investigator that on July 2, 2016, he had traveled to Mexico for the day. While in Mexico, he filled a prescription he had for Oxycodone and then returned home to the United States. Upon entry into the U.S., he was questioned by Border Protection Agents about the nature of his trip, and he informed them that it had been to refill a prescription for Oxycodone, and he showed the agent the handwritten prescription and the pill bottle

which contained 15-20 pills. He was then met by a deputy sheriff of the local county. The drug was seized, and Applicant was issued a citation for possession of a controlled substance. He showed the deputy sheriff the prescription that was obtained from a U.S. doctor. Applicant was advised that it did not matter and was informed he would have to appear in court. He was then released. (GE 2)

Applicant told the investigator that in August 2016 he went to the appropriate court and was told by the clerk that no action had been taken on his citation, and he would be contacted at a later date. He further told the investigator that as of the date of his interview (February 2017) he had no contact with the court and did not know the status of his case. He said he did not report the misdemeanor citation for possession of a controlled substance on his SCA because he did not believe he did anything wrong, was not arrested and had not had his day in court to prove his innocence. He did not believe he was required to disclose it on his SCA.¹ (GE 2)

During his February 2017 interview, Applicant told the investigator that he had a prescription for Oxycodone for pain, which at the time he took lawfully and in compliance with the prescription. He began using it sometime in January 2014, and he never abused it. Beginning in December 2016, he felt like he was becoming addicted and sought treatment from a different doctor than the one who prescribed it. He was prescribed a new medication for pain and weaned from Oxycodone. He said he had not used Oxycodone since January 2017. He did not believe he was addicted to it but believed he was headed in that direction. He has not participated in drug counseling and did not have a diagnosis of opioid addiction. (Tr. 136; GE 2)

Applicant testified that he had a valid prescription for Oxycodone and took it according to the prescription. He said he went to Mexico to have dental work. Upon returning through customs, he declared his medicine, which he said he was not taking at the time. He showed the Border Control agent the bottle of Oxycodone pills. It was an older bottle and not the most current. It was confiscated, his car was searched, and he received a citation for possession of a controlled substance. He said that he went to the wrong courthouse and the hearing was rescheduled. (Tr. 110-115, 167-169)

In October 2017, Applicant was charged with felony importation of cocaine. During his November 2019 interview by a government investigator, he explained that he had gone to Mexico to a veterinarian to obtain vaccines for his dogs. He rented a car because his vehicle had been recently totaled in an accident. In Mexico, while he was at the veterinarian, the vehicle was out of his sight for about three hours. After he finished at the veterinarian, he crossed the Mexico-U.S. border on his return to the United States. His vehicle was searched and inside the spare tire rim 16 kilos of cocaine were found. Applicant was arrested and charged with felony importation of cocaine. He denied the drugs belonged to him and denied he was aware they were in the vehicle. (Tr. 115-117, 150-156; GE 3)

¹ Applicant was referring to a previous SCA which was not offered into evidence.

During his November 2019 interview, Applicant told the government investigator that an investigation concluded that the drugs did not belong to him, but because they were in his vehicle, he was ultimately responsible. No investigative report was provided that concluded the drugs did not belong to Applicant. He told the investigator that he pled guilty to the charge to fast track his case, and it would allow him to qualify for Veteran's Court. In December 2017, he entered a plea of guilty to the felony importation of cocaine. He said he believed he would have been convicted of the charge had it gone to trial. He was incarcerated from October 2017 until approximately January or February 2018 and then immediately participated in the Community Resource and Self-Help Program (CRASH) where he resided for 90 days. This program is apparently a prerequisite for participation in Veteran's Court. (Tr. 67-69, 86-90, 115-118, 150-156)

After release from the CRASH program, while waiting to be accepted to Veteran's Court, Applicant was restricted from leaving the county. He violated that restriction to go visit his son in another state. He was returned to custody in approximately October 2018. He was in a holding facility and then federal prison from October 2018 until April 2019. He was accepted into the Veteran's Court program. In April 2019, he filed a motion to withdraw his original plea of guilty, so he could participate in Veteran's Court. As part of the agreement to allow him to withdraw his plea and participate in Veteran's Court he had to plead guilty to the importation of cocaine charge. It was also learned that he had an outstanding charge for possession of a controlled substance from 2016. During his November 2019 interview, he told the government investigator that in August 2016 he went to the wrong court for this charge and then he assumed the sheriff's office chose not to pursue the charge since no record could be found. He did not follow up on the citation. A failure to appear warrant was issued that he was unaware of until his October 2017 arrest. At his security clearance hearing, he said after he went to the wrong court, he was given a new date to appear, but he failed to do so because he had been arrested and was incarcerated at that time. He testified that the state agreed to resolve the possession of a controlled substance citation while he was a participant in Veteran's Court. The charge was adjudicated by a different court through a diversion program, which he completed, and was dismissed in January 2021. (Tr. 118-127, 139-147-150, 159-164; GE 2)

The Veteran's Court required that Applicant plead guilty to the charge; complete inpatient residence; complete three urinalyses a week; attend counseling; complete community service; find employment; and participate in therapy. Applicant successfully completed the program in July 2020. He testified that after three years, he can request to have the charge expunged. Applicant provided the court document that the importation charge was dismissed with prejudice in July 2020. He provided a certificate of completion for the Veterans Village Recovery Program (February 2020) and received alumni status. This program is a one-year inpatient resident program. He was required to attend the required classes during the day and then he was able to get a job. Applicant completed it in 10 months. He also provided a certificate of completion of the Veteran's Court treatment program from July 2020. (Tr. 127-135, 159-164; GE 2; AE C, D)

In Applicant's October 2019 SCA, he did not disclose under Section 22 (Police Record) or Section 23 (Illegal Use of Drugs or Drug Activity) that he received a citation in July 2016 for possession of a controlled substance. Under these two sections, he disclosed the following regarding his October 2017 felony arrest and charge for importation of cocaine: "I was traveling from Mexico into the United States on October 3, 2017. An illegal substance was found in the rental vehicle I was driving. I have not been convicted and the charges are due to be dismissed." (GE 1) Under Section 23 he wrote: "I was not aware of what was in my vehicle while coming back into the United States. All matters have been settled and I was never convicted of any crime, nor did I ever have to pay an[y] fines concerning this matter." He said under the reasons sections, "I used to live close to the border while working in [State]. I would to (sic) go down to Mexico for better priced dental treatments." (GE 1) He responded "yes" to the questions that asked if in the last seven years he had been involved in the illegal purchase, manufacture, cultivation, trafficking, production, transfer, shipping, receiving, handling or sale of any drug or controlled substance." (Tr 156-159; GE 1)

During Applicant's November 2019 interview with a government investigator, he discussed his October 2017 felony offense of importation of cocaine. He was asked by the investigator if he had any other offenses to report and he said "no". He was confronted with his July 2016 possession of a controlled substance citation. He then explained he did not know why it was not on his SCA because he recalled reporting it, but he could possibly not have saved it correctly. He said he had traveled to Mexico to purchase over-the-counter diabetes medication for his aunt and Oxycodone for himself that had been prescribed and upon his return to the United States he received the above-mentioned citation. At his hearing, Applicant testified that he went to Mexico on this occasion to obtain dental care. He was not sure why he failed to disclose his drug offense citation on his SCA. He then said he did not disclose it because he did not go to court and did not think it was anything serious. (Tr. 136, 138; GE 2)

In Applicant's SCA under Section 11, which asked where he had lived, he did not disclose his incarceration from October 2017 to January or February 2018 or his residence in the CRASH program for 90 days. When the investigator asked him why he failed to disclose where he was living, he explained that he considered these to be transitional, or he did not consider them "residences," and he was not required to disclose them. He said he was not intentionally attempting to conceal this information. When asked at his hearing why he failed to disclose the information, he testified that he did not know why he did not disclose it. He was not the same person mentally as he is now. (Tr. 89-92; GE 1)

Any derogatory information that was not alleged in the SOR will not be considered for disqualifying purposes. However, the information may be considered in the application of mitigating conditions, in making a credibility determination, and in the whole-person analysis.

Applicant provided a letter of intent which stated he would never misuse any illegal substances in the future, including possession of any illegal drug or use any legal drug

without a prescription. If he violates the letter, he consented to automatic revocation of his security clearance. He also agreed that if his charges were not dismissed in July 2023 due to his failure to meet all the requirements, he consented to automatic revocation of his security clearance. (AE A)

The SOR alleges Applicant has six delinquent debts totaling approximately \$74,386. He testified these debts were incurred during his marriage, and the smaller ones he lost track of due to life events. He disclosed on his October 2019 SCA a credit card debt of approximately \$5,000 (SOR ¶ 1.b - actual amount owed \$14,923) that became delinquent in May 2017 that he attributed to a divorce and the end of a contract that he had been working on. He said he planned on contacting the creditor to resolve it once he was back at work. He planned on taking the necessary steps to pay the debt in a timely manner. He did not disclose any other delinquent debts. (Tr. 48-49, 95; GE 1)

During his November 2019 interview, Applicant acknowledged he underestimated the amount of his credit card debt. He stated it became delinquent due to the loss of a contract and because he was unemployed while incarcerated in October 2017 for the above-mentioned drug charge. Applicant told the investigator that he did not have any other financial issues. He was then confronted with the debt in SOR ¶ 1.a (\$57,793) with the same creditor. He explained he had purchased a travel trailer with a loan from the creditor. The original loan amount was \$85,000. He was unable to pay the loan for the same reasons stated above. He told the investigator that he contacted the creditor and planned to make payments on the debt. He said he had started a new job and would pay it when he was sure he was able to keep the job. He testified that he did not know why he failed to disclose this debt on his SCA. (Tr. 96; GE 2)

In November 2019 Applicant acknowledged to the investigator the four remaining debts that are alleged in the SOR (¶¶ 1.c - \$849, 1.d - \$641, 1.e - \$143, 1.f - \$37). He told the investigator that his finances were stable, he was able and willing to pay his debts, and he would not likely experience future financial problems. In his answer to the SOR, he provided documents to show he paid the debts in SOR ¶¶ 1.c, 1.d, 1.e and 1.f in February 2021. He testified that he paid them after he received the SOR. (Tr. 48-51, 79-80; GE 2, 4, 5, 6, 7)

In Applicant's February 2021 answer to the SOR, he said was working on repaying the debts in SOR ¶¶ 1.a and 1.b, and he was taking all actions required to restore his credit. He testified he started to miss payments on the debt in SOR ¶ 1.a in 2017. He said he delayed resolving the debt because in approximately 2020 he was involved in a costly child custody dispute. At his hearing, he provided letters dated February 14, 2023, from the creditor confirming settlement offers of \$26,006 for SOR ¶ 1.a and \$6,696 for SOR ¶ 1.b with monthly payments of \$650 and \$270, respectively, for 40 months until June 2026. He provided copies of payments made in February and March 2023. (Tr. 52; Answer to SOR; GE 4, 5, 6, 7; AE B, E, F)

Applicant testified that his finances and job are stable. After living in rental residences, he and his girlfriend were concerned about the housing market and decided

to purchase a home. In July 2022, they purchased a home together with both using partial eligibility for a Department of Veterans Affairs loan. They each contributed about \$5,000-6,000 toward the down payment. (Tr. 75-77)

Character witnesses testified on Applicant's behalf. His cohabitant has been his girlfriend for three years. She believes he is the most honest and trustworthy person she ever met. She has not observed him using illegal drugs and he takes his valid medication as prescribed. He pays his bills and is very responsible. She holds a security clearance and believes he possesses the good judgment necessary to hold a clearance. (Tr. 20-27)

A coworker testified on his behalf. They have worked together since July 2022. He testified that Applicant's work performance is outstanding. He believes Applicant is very truthful and honest. He trusts him to safeguard classified information. (Tr. 28-33)

Applicant's former supervisor testified on his behalf. Applicant worked for him starting in August 2021 and they are friends. He testified that Applicant's performance was reliable and trustworthy. He would trust Applicant to handle classified information. (Tr. 34-40)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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 overarching 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or

mitigate facts admitted by applicant or proven by Department Counsel, and 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 an applicant may deliberately or inadvertently fail to 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).

Analysis

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 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant had delinquent debts totaling approximately \$74,686 that he began accumulating in 2017. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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.

Applicant began accumulating delinquent debt in 2017. He paid his small delinquent debts in 2021, after receiving the SOR. Despite promises to address the two large debts, he failed to take action on them until days before his hearing. Applicant attributed his delinquent debts to the loss of a contract, divorce, child custody, and unemployment. The unemployment was primarily due to his incarceration after being charged with a serious drug offense. Although some of the reasons were beyond his control, the criminal offenses were not. AG ¶ 20(a) does not apply because some of his debts are ongoing and unpaid. Applicant did not act responsibly under the circumstances. AG ¶ 20 (b) has minimal application. There is no evidence of financial counseling. AG ¶ 20(c) does not apply. AG ¶ 20(d) applies to the four small delinquent debts he paid.

Guideline J: Criminal Conduct

The security concern for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 31, and the following is potentially applicable:

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

Applicant pleaded guilty to a felony for importation of cocaine in 2019 for an offense that occurred in 2017. He received a citation for possession of a controlled substance, Oxycodone in 2016. The above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from criminal conduct. The following mitigating conditions under AG ¶ 32 are potentially applicable:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant's felony charge for importation of cocaine was adjudicated in Veteran's Court. After completion of the requirements by the court, the charge was dismissed with prejudice. The misdemeanor offense of possession of a controlled substance, Oxycodone was adjudicated through a diversion program and was also dismissed. Applicant's past criminal conduct is serious. I am unable to find it occurred under unique circumstances. Applicant had the benefit of having his charges adjudicated with the Veteran's Court. Although, both charges have been dismissed, it was after completion of the program, not because they did not occur. Applicant pleaded guilty to both. His serious criminal conduct casts doubt on his reliability, trustworthiness, and good judgment. His completion of the Veteran's Court's requirements and current employment provides some mitigation, but it does not negate the seriousness of his prior criminal conduct.

Guideline H: Drug Involvement and Substance Misuse

The security concern relating to the guideline for drug involvement and substance misuse is set out 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.

AG ¶ 25 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant was charged with possession of a controlled substance, Oxycodone. He believed he might become addicted to it. He said he had a valid prescription. He was also charged with importation of 16 kilos of cocaine. The above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns. The following mitigating conditions under AG ¶ 26 are potentially applicable:

(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 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 being 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 testified that he has not used Oxycodone since January 2017. There is no evidence to the contrary. He possessed a significant amount of cocaine. Part of the requirements of the Veteran's Court diversion program was to submit three times a week to a urinalysis. Presumably he would not have been released from the program if he had tested positive. He provided a statement of intent to abstain from all drug involvement and substance misuse. I find there is sufficient evidence to conclude he will not use illegal drugs or misuse legal drugs in the future. AG ¶¶ 26(a) and 26(b) apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's

conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

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

Under AG ¶ 2(c), 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 the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F, H and J in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those Guidelines, but some warrant additional comment.

Applicant has not met his burden of persuasion. He resolved his small delinquent debts but failed to take meaningful action on his two largest debts until days before his hearing, despite being aware of the security concerns. He has not established a meaning financial track record to conclude he will faithfully comply with resolving these two large debts. Although, Applicant completed the requirements imposed by the Veteran's Court for his felony offense, the seriousness of his offense is significant and not mitigated. The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the financial considerations and criminal conduct security concerns. He mitigated the drug involvement and substance misuse concerns.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraphs 1.c-1.f:	For Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraphs 2.a-2.b:	For Applicant

Paragraph 3, Guideline J:

AGAINST APPLICANT

Subparagraph 3.a:

Against Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge