



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



In the matter of:)	
)	
)	ISCR Case No. 22-01006
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: Kyra Palmer, Esq.

11/16/2023

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the security concerns under Guidelines E (personal conduct), F (financial considerations), H (drug involvement and substance misuse), and J (criminal conduct). Eligibility for access to classified information is denied.

Statement of the Case

On March 24, 2023, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E, F, H, and J. Applicant responded to the SOR on March 31, 2023, and requested a hearing before an administrative judge. The case was assigned to me on September 12, 2023. The hearing convened as scheduled on October 27, 2023.

Evidence

Government Exhibits (GE) 1 through 6 and 8 through 10 were admitted in evidence without objection. The objection to page 48 of GE 7 was overruled, and the entire exhibit was admitted.

Applicant testified and submitted Applicant Exhibits (AE) A through K. AE A, B, and D through K were admitted without objection. AE C is a 20 second video of a dashboard of a vehicle being driven with warning lights on. The video was described on the record and will be maintained and transferred electronically to the Appeal Board if requested. The objection to AE C was overruled, and it was admitted in evidence.

Findings of Fact

Applicant is a 38-year-old employee of a defense contractor. He is on unpaid leave pending the outcome of this adjudication. He attended college for a period without earning a degree. He married in 2006, divorced in 2009, married for the second time in 2015, and divorced in 2018. He lives with a cohabitant in what he describes as a common-law marriage. He has three children. (Transcript (Tr.) at 17-21, 60-61; GE 1, 2)

Applicant served in the U.S. Army from August 2007 until he was honorably discharged for medical reasons in August 2008. He testified that he served “[a] little short of two years.” His DD-214 indicates that he served 11 months and 23 days. (Tr. at 19; AE A)

Applicant was still in a training command in March 2008 because of his medical issues. Two soldiers reported that Applicant attempted to sell them ecstasy (3, 4 methylenedioxymethamphetamine (MDMA)), an illegal controlled substance. One of the soldiers stated that he overheard Applicant tell a soldier that he had two more to sell. Applicant then asked the soldier if he wanted some ecstasy. The soldier said, “hell no,” and reported the incident to the sergeant first class on duty. (Tr. at 20, 41-42; GE 1, 7)

The duty sergeant confronted Applicant, read him his rights, and asked him to empty his pockets and his wallet. The sergeant found two pills inside a plastic wrapper in Applicant’s wallet that were later determined to be MDMA. The sergeant asked Applicant what the pills were, and he answered ecstasy. A Criminal Investigation Command (CID) investigation was initiated in 2008. Applicant waived his right to remain silent and provided a sworn statement. (GE 7)

In the sworn statement to the CID, Applicant stated that there was a song on that was about ecstasy, and he asked the soldiers if either had used ecstasy before, but he denied selling or attempting to sell ecstasy. He stated that he obtained the two pills in January 2008 while at a strip club. Someone at the club traded Applicant the two pills for some beers. The individual said the pills were some kind of medication but did not say what medication. Applicant stated that he assumed they were some kind of pain pills. Applicant placed the pills in his wallet, where they were later discovered in March 2008 by the duty sergeant. Applicant specifically stated that he only received two pills, and he never took any of the pills. He was given a urinalysis drug test that day, which tested positive for MDMA. (GE 7)

The CID referred the investigation to Applicant’s command for the offenses of wrongful possession of hallucinogens with intent to distribute, wrongful use of hallucinogens, and false official statement. There is no direct evidence of any

disciplinary action against Applicant, and he was discharged with an honorable discharge. I note that the CID reported that he was an E-2 in March 2008, and his DD-214 reported that he was an E-1 when he was discharged. (GE 7)

Applicant was interviewed for his background investigation in August 2021. The interview was summarized in a report of investigation (ROI). Applicant confirmed the accuracy of the ROI in August 2022. He admitted during the interview that several soldiers reported that he was selling ecstasy to soldiers. He stated that people lied, that the military was a hostile environment, and he was not liked. He stated that he never tried to sell drugs, and a drug was never obtained in the incident. (GE 2)

Applicant provided a slightly different story during his testimony. He denied knowledge that the pills were ecstasy, and he denied trying to sell the pills to other soldiers. He stated that he received three pills in the strip club, and he took one for a headache, thinking it was pain medication. He stated that he forgot he had the pills in his wallet. He did not recall if he was given a urinalysis drug test, and he did not recall being informed that he tested positive for ecstasy or MDMA. (Tr. at 41-46)

I did not find Applicant credible. I find the CID report to be far more reliable. I find Applicant knowingly used ecstasy, had at least two ecstasy pills that he tried to sell, and tested positive for MDMA. I further find that he intentionally provided false information about the incident to CID (false official statement), during his 2021 background interview, and during his testimony.

Applicant was driving with his two-year old child in a child seat in May 2019 when he was stopped by the police for defective tail lamps. He voluntarily gave the police consent to search his vehicle. The police discovered under the driver's side seat a canister of white powder that was later identified through analysis to be about three grams of methamphetamine. A small backpack was on the floor by the front passenger's seat. There was a canister with suspected methamphetamine residue in the backpack. A glass pipe of the type that is commonly used to smoke drugs was also in the backpack. Small clear baggies were found in the driver's side door and in the backpack. (Tr. at 32-41; GE 8)

When he was arrested, the police discovered two small clear baggies with methamphetamine residue in his right front pocket and a container with .1 gram of methamphetamine in his left front pocket. A med-kit with multiple containers of suspected THC oil was found under the passenger seat. Possession of marijuana or THC was not a violation of state law. (GE 8)

Applicant was charged with possession of a controlled substance for the methamphetamine and possession of drug paraphernalia. In June 2019, a warrant was issued for his failure to appear at a court date, and he was arrested. He stated that he had moved and did not receive notice of the court date. In October 2019, he pleaded guilty to possession of a controlled substance, and the other charges were dismissed. He was sentenced to supervised probation for two years, completion of a substance abuse evaluation with the requirement to follow any recommendations, and community

service. He passed multiple drug tests between May and December 2019. He completed the terms of his probation; it was converted to unsupervised probation in November 2020; and probation was terminated early in May 2021. (Tr. at 36, 46-49; GE 6, 8-10; AE E)

Applicant submitted a Questionnaire for National Security Positions (SF 86) in June 2021. He reported the May 2019 arrest and subsequent conviction for possession of a controlled substance. He denied illegally using any illegal drugs or controlled substances in the last seven years. (GE 1)

When he was interviewed for his background investigation in August 2021, Applicant stated that he was unaware there was methamphetamine in his car when he was arrested in May 2019. He denied knowingly using or possessing methamphetamine. He stated that he let someone else use his vehicle, and the person must have left the drugs in his car without his knowledge. He stated that he did not know the friend's name, and he no longer associated with him. He also told the investigator that the June 2019 arrests for failure to appear were for the same incident. (GE 2)

Applicant testified that he was going through a difficult time in his marriage, and he used methamphetamine on one occasion before his arrest. He admitted that he had baggies in his pocket that were from when he used methamphetamine. He continued to deny that he knew there was methamphetamine in his vehicle. He stated he lent the vehicle to the friend he used methamphetamine with, and that person must have left the methamphetamine in the vehicle. He denied any additional drug involvement. He stated that he took responsibility for his bad decision to use methamphetamine, and he disassociated himself from anyone involved in illegal drugs. (Tr. at 32-40; AE E)

Applicant denied being untruthful during his 2021 background interview. He testified that he did not mention to the investigator that baggies were found in his pocket because he did not remember that fact. (Tr. at 40-41, 49-50, 59; GE 2)

I did not find Applicant credible. I find he knowingly possessed and used methamphetamine. I further find that he intentionally provided false information when he failed to list his use of methamphetamine on his SF 86, during his 2021 background interview when he stated that he was unaware there was methamphetamine in his car and he denied knowingly using or possessing methamphetamine, and during his testimony.

The SOR alleges a \$3,069 collection account to a bank (SOR ¶ 1.a), a \$483 collection account to a telecommunications company (SOR ¶ 1.b), and a balance of \$16,364 due on an auto loan after the vehicle was repossessed (SOR ¶ 1.c). Applicant admitted owing the first two debts, but he stated that he paid the auto debt. The debts are listed on one or more credit reports. Applicant did not report any financial issues when he submitted his June 2021 SF 86, even though all the debts were delinquent by then. (GE 1, 3-5)

Applicant stated that the \$3,069 collection account to a bank (SOR ¶ 1.a) was used to buy an engagement ring for his second wife. He stated that he tried to get the ring back from her after they separated, but she told him that she lost the ring. He was unable to get her to pay the account, so he unsuccessfully disputed it with the credit reporting agencies. He stated that he then did not have the ability to pay the debt. In October 2023, he agreed to make partial payments of \$100 a month for seven months, with the first payment due on October 20, 2023. He testified that he made the first payment, but he did not provide any documentary evidence. (Tr. at 21-24; Applicant's response to SOR; GE 3-5; AE B)

Applicant stated that the \$483 collection account to a telecommunications company (SOR ¶ 1.b) was for equipment that he returned, but the company did not have records that it was returned. He stated that if he was given a receipt for the returned equipment, he no longer has it. He unsuccessfully disputed the debt with the credit reporting agencies. He has decided to pay the debt. (Tr. at 24-26; Applicant's response to SOR; GE 2-5)

SOR ¶ 1.c alleges an unpaid balance of \$16,364 due on an auto loan after the vehicle was repossessed. Applicant testified that the vehicle developed transmission problems, and he was told he needed a new transmission. He had an extended warranty on the vehicle, but the holder of the warranty told him that he did not need a new transmission. He stopped paying the loan, and the vehicle was repossessed. The vehicle was auctioned, and the creditor waived any deficiency, resulting in a \$0 balance. During his background interview in July 2021, he stated that he bought a more expensive vehicle than he could afford, he missed payments, and the vehicle was repossessed. He never mentioned transmission problems. (Tr. at 26-30; Applicant's response to SOR; GE 2-5; AE C, D)

Applicant stated that his finances are now in order. He stated that he intends to pay the remaining SOR debts. (Tr. at 21-32, 58)

Applicant submitted documents and letters attesting to his excellent job performance and strong moral character. He is praised for his work ethic, expertise, trustworthiness, professionalism, commitment to the mission, craftsmanship, dedication, leadership, reliability, and integrity. He is recommended for a security clearance. (AE F-K)

Policies

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief

introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines 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."

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 H, Drug Involvement and Substance Misuse

The security concern 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. 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 conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable in this case:

- (a) any substance misuse (see above definition);
- (b) testing positive for an illegal drug;
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

While in the U.S. military in 2008, Applicant possessed, used, and tested positive for MDMA, a controlled substance also known as ecstasy. He had methamphetamine and drug paraphernalia in his possession when he was arrested in May 2019. AG ¶¶ 25(a), 25(b), and 25(c) are applicable.

Applicant was still in training in 2008. I am confident he was not granted access to classified information at the time. AG ¶ 25(f) is not applicable. The language in SOR ¶ 2.b that alleges "while granted access to classified information" is concluded for Applicant.

AG ¶ 26 provides conditions that could mitigate security concerns. The following 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 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.

Applicant denied knowingly taking ecstasy, and he denied knowledge that the pills in his possession in 2008 were ecstasy. He testified that he was going through a difficult time in his marriage, and he used methamphetamine on one occasion before his 2019 arrest. He denied knowing that there was methamphetamine in his vehicle. He denied any additional drug involvement, and he passed multiple drug tests between May and December 2019. He stated that he took responsibility for his bad decision to use methamphetamine, and he disassociated himself from anyone involved in illegal drugs.

As addressed in the findings of fact. I did not find Applicant credible about either incident. He knowingly used ecstasy, had at least two ecstasy pills that he tried to sell, and tested positive for MDMA in 2008. He knowingly had methamphetamine in his vehicle in 2019. He intentionally provided false information about the 2008 incident to CID (false official statement), during his 2021 background interview, and during his testimony, and he intentionally provided false information about the 2019 incident during his 2021 background interview, and during his testimony.

Since I cannot trust anything Applicant says, I also cannot find that illegal drug involvement is unlikely to recur. His drug involvement continues to cast doubt on his current reliability, trustworthiness, and good judgment. None of the mitigating conditions are applicable.

Guideline J, Criminal Conduct

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

Criminal activity creates doubt about an Applicant'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.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. 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.

The SOR cross-alleges Applicant's illegal drug incidents under criminal conduct, and it also alleges his arrest for failure to appear. AG ¶ 31(b) is applicable.

Conditions that could mitigate criminal conduct security concerns are provided under AG ¶ 32. The following 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;

(c) no reliable evidence to support that the individual committed the offense; 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 explanation for his failure to appear is plausible, reasonable, and accepted. SOR ¶ 3.a is mitigated. His explanations for his drug incidents are not plausible nor reasonable. The analysis under Guideline H applies equally here. His criminal conduct continues to cast doubt on his current reliability, trustworthiness, good judgment, and willingness to comply with laws, rules, and regulations. The above mitigating conditions, individually or collectively, are insufficient to alleviate those concerns.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 clearance investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

Applicant intentionally provided a false statement in 2008 when he denied taking any of the ecstasy pills. He intentionally provided false information during his 2021 background interview when he stated that he was unaware there was methamphetamine in his car during his arrest in May 2019. AG ¶ 16(b) is applicable to both false statements.

SOR ¶ 4.c alleges that Applicant intentionally provided false information during his 2021 background interview when he stated the June 2019 arrests for failure to appear were for the same incident. There is insufficient evidence for a finding that it was an intentionally false statement. AG ¶ 16(b) is not applicable to that statement. SOR ¶ 4.c is concluded for Applicant.

SOR ¶ 4.d cross-alleges the drug involvement and criminal conduct as personal conduct. Applicant's conduct reflects questionable judgment and an unwillingness to comply with rules and regulations. It also created vulnerability to exploitation, manipulation, and duress. AG ¶ 16(e) is applicable. AG ¶ 16(c) is not perfectly applicable because Applicant's conduct is sufficient for an adverse determination under

the drug involvement and substance misuse and the criminal conduct guidelines. However, the general concerns about questionable judgment and an unwillingness to comply with rules and regulations contained in AG ¶¶ 15 and 16(c) are established.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

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

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability.

Personal conduct security concerns are not mitigated under the same analyses addressed above under Guidelines H and J. Additionally, having determined that Applicant intentionally provided false information in an attempt to mislead the government, I have also determined that his testimony about those statements was also false. It would be inconsistent to find his conduct mitigated.¹

¹ See ISCR Case 03-22819 at 4 (App. Bd. Mar. 20, 2006), in which the Appeal Board reversed the Administrative Judge's decision to grant Applicant's security clearance:

Once the Administrative Judge found that Applicant deliberately falsified a security clearance application in September 2002, the Judge could not render a favorable security clearance decision without articulating a rational basis for why it would be clearly consistent with the national interest to grant or continue a security clearance for Applicant despite the falsification. Here, the Judge gives reasons as to why he considers the falsification mitigated under a "whole person" analysis, namely that Applicant has

Guideline F, Financial Considerations

The security concern 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant defaulted on an auto loan, a consumer loan, and payments to a telecommunications company. AG ¶¶ 19(a) and 19(c) are applicable.

Applicant stated that the \$3,069 collection account to a bank (SOR ¶ 1.a) was used to buy an engagement ring for his second wife. She refused to return the ring after they separated, and she told him that she lost the ring. He unsuccessfully disputed it with the credit reporting agencies. There is some precedent for a fiancée to return an engagement ring if the marriage does not take place, but in general once there is a marriage, the ring belongs to the wife. Moreover, even if there was a legitimate dispute, that would be between Applicant and his wife, not Applicant and the bank. He was unwilling to satisfy the debt regardless of the ability to do so. AG ¶ 19(b) is applicable to that debt.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

matured, has held a position of responsibility, recognizes how important it is to be candid in relation to matters relating to her security clearance, and has changed her behavior so that there is little likelihood of recurrence. However, the Judge's conclusion runs contrary to the Judge's rejection of Applicant's explanations for the security clearance application falsification. At the hearing (after earlier admitting the falsification in her March 2003 written statement to a security investigator), Applicant testified that she had not intentionally falsified her application. Given the Judge's rejection of this explanation as not being credible, it follows that the Judge could not have concluded Applicant now recognizes the importance of candor and has changed her behavior.

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

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

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

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

Applicant testified that the vehicle had transmission problems, and his warranty was not honored. He told a different story to the background investigator in 2021. In either event, the SOR ¶ 1.c debt is resolved and mitigated.

The remaining two debts only total about \$3,500. That would not be a significant amount from a security perspective if I could accept Applicant's assertions that he would pay the debts. I cannot. In October 2023, he agreed to make partial payments of \$100 a month for seven months for the debt for the ring, with the first payment due on October 20, 2023. He testified that he made the first payment, but he did not provide any documentary evidence. An applicant who begins to resolve security concerns only after having been placed on notice that his or her clearance is in jeopardy may lack the judgment and willingness to follow rules and regulations when his or her personal interests are not threatened. ISCR Case No. 17-03229 at 6 (App. Bd. Jun. 7, 2019). His stated intentions to pay the two debts in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

Applicant does not have a track record that would enable me to trust that he will pay the remaining two SOR debts. There is insufficient evidence for a determination that his financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay the debts. His financial issues are recent and ongoing. They continue to cast doubt

on his current reliability, trustworthiness, and judgment. None of the mitigating conditions are applicable to the SOR ¶¶ 1.a and 1.b debts.

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(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 have incorporated my comments under Guidelines E, F, H, and J in my whole-person analysis. I also considered Applicant's favorable character evidence. However, he has multiple drug offenses, and he cannot be trusted to tell the truth.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the security concerns under Guidelines E, F, H, and J.

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
Subparagraph 1.c:	For Applicant
Paragraph 2, Guideline H:	Against Applicant
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant (except for the language "while granted access to classified information," which is found For Applicant)

Subparagraphs 2.c-2.d:	Against Applicant
Paragraph 3, Guideline J:	Against Applicant
Subparagraph 3.a:	For Applicant
Subparagraph 3.b:	Against Applicant
Paragraph 4, Guideline E:	Against Applicant
Subparagraphs 4.a-4.b:	Against Applicant
Subparagraph 4.c:	For Applicant
Subparagraph 4.d:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge