



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



In the matter of:)
)
) ISCR Case No. 22-00808
)
Applicant for Security Clearance)

Appearances

For Government: John C. Lynch, Esq., Department Counsel
For Applicant: Daniel C. Meyer, Esq.

01/31/2024

Decision

HALE, Charles C., Administrative Judge:

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

Statement of the Case

On September 7, 2022, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines J, H, E, and F. Applicant responded to the SOR on January 11, 2023, and requested a hearing before an administrative judge. The case was assigned to me on July 17, 2023.

The hearing was convened as scheduled on August 30, 2023. Government Exhibits (GE) 1 through 11 were admitted in evidence without objection. The Government’s disclosure letter dated October 31, 2022, was marked as Hearing Exhibit (HE) I. The Government’s exhibit list, a statute, which I took Administrative Notice of, and Applicant’s brief of counsel were marked as HE II, III, and IV respectively. Applicant testified and offered Applicant Exhibits (AE) A-F, which were admitted without objection. I left the record open, and the Government offered GE 12, which was admitted without

objection. The Defense Office of Hearings and Appeals (DOHA) received the transcript (Tr.) on September 12, 2023.

Findings of Fact

In his Answer, Applicant admitted all allegations and stated after each allegation “with mitigating conditions satisfied as detailed in the attached filing.” His admissions are incorporated in my findings of fact.

Applicant is a 23-year-old employee of a defense contractor working as an Information Technology (IT) manager – cloud network engineer for a Federal agency. He has worked for his current employer since February 2021. He obtained a bachelor’s degree in 2018 in one of the sciences. He held a range of jobs before his current employment because of the difficulty he had in finding a job in his degree field. After moving into the IT-field he has held several positions. He is single and lives by himself. (Tr. at 25-25, 27; GE 1 at 10, 12, 13-17). He completed a security clearance application (SCA) in 2017 and was granted a security clearance in November 2018. (GE 12.) He completed his most recent SCA in May 2021. (GE 1.)

Guideline J

SOR ¶ 1.a and cross-alleged in SOR ¶ 3.a. Applicant admits the allegation. In July 2011, after a warrant was issued for his arrest in state M, he was arrested and charged with failure to return to the scene of an accident, which resulted in him pleading guilty and being sentenced to 30 days in jail with 29 days suspended and two years of probation. He cited the death of friends and family members at the time for his actions. (Tr. at 43-45, 58; GE 5.)

SOR ¶ 1.b and cross-alleged in SOR ¶¶ 2.a and 3.a. In October 2012, Applicant was arrested in state S and charged with simple possession of marijuana, which was found in his backpack. He returned to state S, where he complied with the terms of the court, which required him to take a class. After he completed the terms of the court the matter was “dismissed no prosecution” (Tr. at 43, 59; GE 6.)

SOR ¶ 1.c and cross-alleged in SOR ¶ 3.a. In June 2013, Applicant was arrested in state X and charged with felony breaking and entering with intent to commit a felony and assault and battery. He entered the residence of a female classmate who was not home at the time to get his “stuff” from her residence, which he assumed he could do without issue. However, his ex-girlfriend was in the residence at the time. His ex-girlfriend accused him of assault. He denied touching her and testified that she hit him. He left and was arrested later that night. The charges were *nolle prossed*. (Tr. at 42, 60-61; GE 4.)

SOR ¶ 1.d and cross-alleged in SOR ¶¶ 2.a and 3.a. In June 2018, he was arrested in jurisdiction D and charged with driving under the influence, operating a vehicle while impaired, unlawful possession of ammunition, and reckless driving. The SOR also alleged he had 35 grams of marijuana in his vehicle at the time of his arrest. He disputed the police officer’s description of his driving that resulted in him being pulled over. The police

had him provide two breath samples two hours after the stop. He scored at least .121 g/210L on both. (Tr at 62-63; GE 7 at 1, 11.) Pursuant to a plea agreement, the matter was resolved by *nolle diversion*. He pled guilty to driving under the influence under a deferred sentencing agreement and the charge was dismissed in January 2019 after he completed a diversion program. (GE 7 at 11; AE E at 3.) He submitted a certificate showing his completion of an alcohol education and treatment course. (AE E at 4.) He acknowledged in his testimony that the marijuana was his. He admitted to the arresting officers the ammunition in the vehicle was his and said it was for a properly registered weapon. The prosecutor did not go forward on the ammunition charge. (Tr at 62-63; GE 7 at 3, 5.)

SOR ¶ 1.e and cross-alleged in SOR ¶¶ 2.a and 3.a. In June 2021, Applicant, a resident of jurisdiction D, was arrested in jurisdiction D and charged with felony unlawful possession with intent to distribute a controlled substance and possession of a large capacity ammunition feeding device. As of the date of the SOR, his case was still pending. The police were investigating a gunshot that had entered his neighbor's residence from his residence. His property manager contacted him and informed him the police were present to search his residence and he testified he consented to their search. (Tr. at 121-122.) He denied the police report that stated he was identified coming off the elevator and walking past the officers conducting the search and exiting through the stairwell. He said that he returned later and found his residence "trashed" and a warrant posted on his door. (Tr. 69-70; GE 8 at 3.) The search of his residence revealed the following:

- 4 Mason jars containing marijuana in his living room on his coffee table;
- total of 15.9 oz of marijuana found in residence;
- 4 vacuum sealed bags containing marijuana in the bedroom;
- 180 plastic packaging envelopes in his living room on his coffee table;
- 1 digital scale under the living room coffee table;
- 1 Glock Model 30 handgun, which was properly registered;
- 1 Glock Model 40 handgun, which was properly registered;
- 1 shotgun;
- 1 semi-automatic rifle with short barrel installed;
- 1 upper receiver allowing conversion to a full length rifle;
- 1,123 rounds of ammunition of various calibers;
- 15 large capacity ammunition feeding devices for the pistols and rifles;
- personal papers and identification documents of Applicant; and
- \$3,024 in U.S. currency in multiple denominations. (GE 8 at 3-4.)

Applicant told the DoD investigator and testified that he was growing marijuana for knowledge and as an experiment. He attributed his interest in the process of growing marijuana to his degree in the natural sciences and thought it would be an interesting experiment and hobby because of the public debate and shifting culture views on marijuana along with the new laws and regulations surrounding marijuana. There was no reference in the police report to growing nutrients, flowerpots, or soil. (Tr. at 81, 83, 130; GE 8.) He denied selling marijuana. (Tr. at 81.)

The shotgun, rifle, and ammunition feeding devices are illegal in jurisdiction D. Applicant testified he was familiar with the firearm registration process for jurisdiction D because he had previously registered his two handguns. (Tr. at 125-126.) In August 2022, Applicant entered into a plea agreement. He pled guilty to one count of possession of an unregistered firearm and one count of unlawful possession of ammunition. He was sentenced to 30 days of incarceration on both offenses, which was suspended, and six months of unsupervised probation. (GE 8 at 10.)

Guideline H

SOR ¶ 2.a cross alleges the information set forth in subparagraphs 1.b, 1.d, and 1.e. See the above findings of fact. Applicant admits the allegation.

SOR ¶ 2.b and cross-alleged in SOR ¶ 3.a. Applicant admitted he cultivated marijuana from 2020 to April 2021. The amount of marijuana found in his residence, the packaging material, the scale, and the presence of firearms, as well as the lack of normal growing tools, is not consistent with cultivating marijuana for personal study. (GE 2 at 6, 22-23; GE 8 at 3-4.)

SOR ¶ 2.c and cross-alleged SOR ¶ 3.a. Applicant completed his first SCA in 2017. (GE 12.) He admitted he cultivated, possessed, and distributed marijuana after being granted a security clearance in November 2018. He testified he was granted access to classified information. (Tr. at 53.) He acknowledged to the DoD investigator he gave some of the marijuana to a friend and discussed this action in his testimony. (Tr. at 85-87; GE 2 at 6, 22-23.) The amount of marijuana found in his residence, the packaging materials, the scale, and the presence of firearms, as well as the lack of normal growing tools, is not consistent with cultivating marijuana for personal study. (GE 8 at 3-4.)

Guideline E

SOR ¶ 3.a cross-alleges the information set forth in subparagraphs 1.a, 1.b, 1.c, 1.d, 1.e, 2.b, and 2.c. Applicant admitted the allegation. See the above findings of fact for the underlying conduct involving his questionable judgment.

Applicant admitted SOR ¶¶ 3.b – 3d. In his SCA he deliberately falsified material facts in three sections of his SCA. SOR ¶ 3.b, in Section 22 he failed to disclose on of his SCA his police record set forth in SOR ¶ 1.d. In SOR ¶ 3.c, in Section 22 he failed to disclose on his SCA, his police record set forth in SOR ¶¶ 1.b and 1.d. In SOR ¶ 3.d, he failed to disclose in Section 23 his illegal use of drugs or drug activity set forth in SOR ¶¶ 1.d., 2.b, and 2.c.

Applicant admitted SOR ¶¶ 3.e and 3.f that he falsified material facts during his security clearance interviews on July 8, 2021, and September 30, 2021, respectively. He answered “No” during the respective interviews about his criminal conduct until confronted by the DoD investigator. (Tr. at 101-102; GE 2 at 16.) SOR ¶ 3.e, when he was asked whether in the last seven years he had been arrested, charged with, convicted

of, or sentenced for a crime or received a summons, citation, or ticket to appear in court, or been on probation he answered “No” and did not disclose the information set forth in SOR ¶¶ 1.d and 1.e. After his denial he was confronted with the SOR ¶ 1.d incident and he then discussed it with the investigator. (GE 2 at 16.) He testified it was his understanding that if a charge was dismissed, he would not have to include it on his SCA. (Tr. at 102.) SOR ¶ 3.f, when asked whether in the last seven years he had engaged in behavior of a criminal nature, whether or not he had been caught, charged, or convicted, he answered “No” and did not disclose the information set forth in in SOR ¶ 1.e until confronted by the DoD investigator. After he was confronted with the SOR ¶ 1.e incident he discussed it with the investigator. (Tr. at 103-104; GE 2 at 17-18.) He testified his counselor at the time told him not to say anything unless questioned about it because “essentially” the charges were going be dropped. (Tr. at 104.) See the above findings of fact for the underlying conduct involving his lack of candor and dishonesty involving these undisclosed matters.

Applicant admitted in his testimony that he had used marijuana less than 10 times, while holding a security clearance and that was why he agreed to sign a letter of non-use. (Tr. at 92.) In follow-up questioning about using marijuana while holding a clearance he testified: “I don't remember the last time I smoked ... I [am] going to just say that, going forward, I did say that, going forward, it's something I don't do, and it's something that I'm willing to sign my letter of non-use for. Because that's -- I understand the seriousness of the situation and I want to rectify any mistakes I've made in the past.” (Tr. at 110.) The 2011, 2012, and 2013 arrests were not disclosed in Applicant's 2017 SCA. (GE 12.) I have limited my consideration of Applicant's testimony about his marijuana use and his nondisclosures on his 2017 SCA to determining his credibility and my whole-person analysis. In addition, I considered his declaration, AE C, the four declarations of support, AE D, and his statement of non-use and completion of a substance abuse course, AE E, in determining his credibility and my whole-person analysis.

Guideline F

SOR ¶ 4.a. Applicant is indebted to a financial institution for an account charged off in the amount of \$18,524. He admits the debt, which was for a credit card. He got it in the 2014-2015 time period. He testified the credit card went into collections when the monthly payments started to get too high for him to pay. He tried to go to a debt consolidation firm to rectify the problem. (Tr. at 116.) He experienced periods of unemployment between 2016 and 2018 and had very little income when the account was charged off. (Tr. at 116.) He testified he had reached out to the financial institution and is now making a monthly payment to try to bring the debt down and to try to pay back his debt. (Tr. at 30; 117-118.) In early 2023, he set up a payment plan to pay \$238 a month on the 5th of every month and his first payment was received on February 7, 2023. (AE E at 8.) He could not recall when he made his first payment. The later credit reports reflect he has made payments toward the debt. (Answer at 5; Tr. at 107-108; GE 2 at 13; GE 9 at 2; GE 10 at 6; GE 11 at 5.) All three credit reports (June 2021, July 2022, August 2023) show the debt as charged off. He listed the debt on his SCA and discussed it during his security clearance interviews in 2021 where he stated his intent to pay it off by the end of

2021 or 2022. He reported four international trips from 2016 to November 2019, and traveled internationally three more times after submitting his May 2021 SCA. (Tr. at 136; GE 1 at 25-30.)

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 J: Criminal Conduct

AG ¶ 30 expresses the security concern for criminal conduct:

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 following disqualifying conditions under AG ¶ 31 are potentially applicable:

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

(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.

Based on Applicant's admissions and the evidence in the record, the above disqualifying conditions apply.

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.

AG ¶¶ 32(a) and (d) do not apply. Applicant's criminal conduct is serious. The probation for his most recent criminal conduct was completed less than a year ago. His criminal conduct is part of a pattern from 2011 to June 2021. He had demonstrated some rehabilitative potential by completing his assigned classes and complying with sentencing

terms but these rehabilitative steps have not deterred him from further criminal acts. His most recent rehabilitative steps are insufficient given the record evidence. He has provided insufficient evidence to find that his criminal conduct is unlikely to recur, and his conduct casts doubt on his current reliability, trustworthiness, good judgment, and willingness to comply with laws, rules, and regulations.

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:

(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.

Applicant admitted illegal cultivation, possession, and distribution of marijuana after he was granted a security clearance AG ¶ 25(c) and AG ¶ 25(f) are applicable. The fact marijuana may be legal in Applicant's jurisdiction makes no difference, See ISCR Case No. 20-01772 (App. Bd. Sept. 14, 2021) (noting continued relevance of October 25, 2014 DNI Memorandum in the application of Guideline H for marijuana cases). AG ¶ 25(c) applies.

SOR ¶ 2.c did not allege drug use while granted access to classified information as stated in AG ¶ 25(f). As such, it does not allege the conduct identified in AG ¶ 25(f). AG ¶ 25(f) does not apply.

Additionally, SOR ¶ 2.b alleges information that is also alleged in SOR ¶ 2.c, which makes it a duplicate allegation. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be

resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005). SOR ¶ 2.b 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.

AG ¶¶ 26(a) and 26(b) are not applicable. Applicant violated state laws on two occasions. He then violated Federal drug laws after being granted a security clearance, which he admits. This behavior raises substantial questions about his judgment, reliability, and willingness to comply with laws, rules, and regulations. See ISCR Case No. 20-02974 (App. Bd. Feb. 1, 2022). Based on the items listed in the arrest warrant and his statement in the interrogatories, I do not find his claims that he was growing marijuana for scientific reasons credible. Given his prior arrest history, the passage of time, a little over 30 months since his last arrest, does not mitigate his conduct. While he provided some evidence of actions taken to overcome his problem by not associating with those who use drugs and signing a statement of intent to abstain from all drug involvement, these actions are insufficient given the record evidence. None of the mitigating conditions apply.

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

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

(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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(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; 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;

(2) while in another country, engaging in any activity that is illegal in that country;

(3) while in another country, engaging in any activity that, while legal there, is illegal in the United States.

SOR ¶ 3.a cross-alleges the conduct set forth in SOR ¶¶ 1.a, 1b., 1.c, 1.d, 1.e, 2.b, and 2.c, conduct which Applicant admitted and included marijuana cultivation and distribution after being granted a security clearance. AG ¶ 16(e) is applicable to SOR ¶ 3.a.

SOR ¶¶ 3.b-3.d allege Applicant deliberately failed to disclose certain behavior on his SCA. Applicant admitted and the record supports that he deliberately failed to disclose or concealed his arrests, as alleged in SOR ¶¶ 3.b-3.d. AG ¶ 16(a) is applicable to SOR ¶¶ 3.b-3.d.

For SOR ¶¶ 3.e and 3.f, Applicant deliberately failed to disclose certain behavior during his interviews with an authorized DoD investigator. Applicant admitted and the record supports that he deliberately failed to disclose the behavior alleged in SOR ¶¶ 1.b and 1.e. AG ¶ 16(b) is applicable to SOR ¶¶ 3.b-3.d.

The following mitigating conditions under AG ¶ 17 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; and

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

AG ¶ 17(a) is not established for either SOR ¶¶ 3.b-3.d or SOR ¶¶ 3.e and 3.f. Applicant admitted he deliberately failed to disclose the information described in SOR ¶¶ 1.b, 1.d, 2.b, and 2.c on his SCA. After submitting his SCA he answered "No" to questions from a DoD investigator and failed to disclose the information described in SOR ¶¶ 1.d and 1.e until confronted by the investigator. There was no evidence of a good-faith effort to correct any omission or falsification.

AG ¶ 17(b) is not established for SOR ¶¶ 3.e and 3.f. Applicant was not credible in his testimony and offered no supporting evidence that a counselor had advised him to not disclose any information to the DoD investigator.

AG ¶ 17(c) is not established for SOR ¶ 3.a. Applicant's offenses are not minor. There is a pattern of behavior resulting in him being arrested approximately every four years since 2011, and most recently in June 2021. None of the circumstances are unique and his explanation for his 2021 arrest incident is not credible, which occurred while he held a security clearance.

Applicant has taken positive steps to reduce or eliminate his vulnerability to exploitation by signing his letter of intent to not use marijuana, seeking substance abuse assistance and ending his marijuana cultivation. However, he grew and distributed marijuana after being granted a security clearance and his testimony about it being a science experiment was not credible given the items recovered in the residence by the police. Personal conduct security concerns for SOR ¶ 3.a are not mitigated under AG ¶ 17(c).

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012)

Applicant's admissions, testimony, and the evidence establish two disqualifying conditions under this guideline: AG ¶ 19(a): inability to satisfy debts; and AG ¶ 19(c): a history of not meeting financial obligations.

Applicant accrued the debt in question after periods of unemployment and underemployment. 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; and

(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;

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

AG ¶¶ 20(a), 20(b) and 20(d) do not apply. Applicant's financial delinquency is ongoing and unresolved. He has been employed by his sponsor since February 2021. He has taken seven international trips since the debt in question became delinquent but did not initiate a payment plan until early 2023. It is well-established that the timing of debt payments is a relevant consideration for determining whether an applicant has acted in a reasonable and responsible manner in addressing financial problems. For example, to receive full credit under Mitigating Condition 20(d), an applicant must initiate and adhere

“to a good faith effort to repay overdue creditors or otherwise resolve debts.” His recent actions to resolve this debt only after receiving the SOR does not receive full mitigating credit. See ISCR Case No. 08-06058 at 5 (App. Bd. Sep. 21, 2009). Applicant did not establish that he incurred the debt under circumstances unlikely to recur, that he acted responsibly under the circumstances, or that he has made a good-faith effort to pay or resolve his debt.

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 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 Guideline J, Guideline H, Guideline E, and Guideline F in my whole-person analysis.

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 criminal conduct, drug involvement, personal conduct, and financial considerations security concerns.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1: Guideline J:	AGAINST APPLICANT
Subparagraphs 1.a-1.e:	Against Applicant
Paragraph 2: Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a and 2c:	Against Applicant

Subparagraph 2.b:	For Applicant
Paragraph 3: Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a-3.f:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

Charles C. Hale
Administrative Judge