



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



In the matter of: )  
)  
) ISCR Case No. 22-02000  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Brian Farrell, Esq., Department Counsel,  
For Applicant: *Pro se*

03/27/2024

**Decision**

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the criminal conduct, drug involvement and substance misuse, financial considerations, and personal conduct security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On February 10, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline J (criminal conduct), Guideline H (drug involvement and substance misuse), Guideline F (financial considerations), and Guideline E (personal conduct). The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017.

Applicant submitted an undated response to the SOR (Answer) and requested a hearing before an administrative judge. The case was assigned to me on November 7, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice on November 17, 2023, scheduling the matter for a video conference hearing on December 19, 2023. I convened the hearing as scheduled.

At the hearing, I admitted in evidence without objection Government Exhibits (GE) 1 through 14. Applicant testified but did not submit documentation or call any witnesses. At Applicant's request, I kept the record open until January 16, 2024, to enable him to submit documents. He did not do so and the record closed. DOHA received the hearing transcript (Tr.) on January 16, 2024.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.a-1.f, 2.a, 3.a-3.e, and 3.j-3.s, and he denied SOR ¶¶ 3.f, 4.a, and 4.b. As he neither admitted nor denied SOR ¶¶ 2.b and 3.g-3.i, I am construing his response as a denial of those allegations. SOR ¶ 2.b cross-alleges the conduct under SOR ¶ 1.e and SOR ¶ 4.b cross-alleges the conduct under SOR ¶¶ 1.a-1.f, 2.a, 3.a, and 3.b.

Applicant is 34 years old. He has never married and he has a six-year-old child. He obtained his high school diploma in 2007. He earned an associate degree in 2011. He worked for various non-defense contractors from 2011 to 2021, except for two periods of unemployment from approximately May 2016 to August 2016 and September 2020 to August 2021. He has since worked as a systems administrator for his employer, a defense contractor. He has never held a security clearance. (Tr. 5-7, 14-16, 26-27, 97, 102-107; GE 1-2, 5)

### **Guideline J: Criminal Activity**

Applicant has a history of criminal involvement between 2010 and 2021. (Tr. 14-16) In October 2010, he was arrested and charged with battery. He was a 21-year-old college student, and he got into a fight with another student at an off-campus house party, where he had consumed alcohol. When the other student made comments with racial slurs, he got angry and struck the student in the face, chipping his tooth. They scuffled, others had to stop them, and he left the premises. He was arrested about one week later. He received probation before judgment (PBJ), was placed on unsupervised probation for an unspecified period, and he was ordered to pay \$350 in restitution. He could not recall if he was ordered to abstain from alcohol or drugs while on probation. The charges were dismissed in August 2011. (SOR ¶¶ 1.a, 4.b) (Tr. 27-31, 37-38, 43; GE 2, 14)

In June 2013, Applicant was arrested and charged with second degree assault and disorderly conduct. (SOR ¶¶ 1.b, 4.b) He was 24 years old and had consumed alcohol before the incident. In his Answer, he stated he got into a fight initiated by the other individual. Police records reflect that a plain clothes officer observed him wrap a shirt around his hand, approach another male, and punch that individual in the face before running away. Applicant disputed he had a shirt wrapped around his hand and stated he punched the other individual in self-defense after that individual approached and put his hand on him. He acknowledged he ran away after doing so. When the officers found him a few blocks away, he admitted his actions and was arrested. The other individual was arrested and charged with second degree assault on a detective, disorderly conduct, and resisting arrest. (Tr. 31-45; GE 2, 10, 14)

In March 2014, Applicant was charged with failure to appear in court for the 2013 charges. (SOR ¶¶ 1.c, 4.b) He missed his court date because he lived two hours away and he had the wrong date. When he appeared in court in April 2014, he received PBJ and was placed on unsupervised probation. He could not recall if he was ordered to abstain from alcohol or drugs while on probation. The charges of second-degree assault and disorderly conduct were *nolle prosequi* in July 2014. (Tr. 31-45; GE 2, 10, 14)

In April 2015, Applicant was arrested and charged with driving while impaired by alcohol (DWI). He consumed alcohol when he was partying with friends at a nightclub. As he was driving home, he was pulled over by a state trooper. The trooper smelled alcohol on his breath and administered a sobriety test, which he failed. He was arrested and taken to the police station where he was given a breathalyzer test and registered a blood alcohol content (BAC) of .8%. He admits he was driving drunk. (SOR ¶¶ 1.d, 4.b) (Tr. 45-52; GE 1-2, 9, 14)

Applicant appeared in court in August 2015 and received PBJ. He was fined \$800, placed on supervised probation from September 2015 until September 2016, ordered to abstain from drugs and alcohol, and required to take Mothers Against Drunk Driving (MADD) and drug and alcohol awareness classes. He maintained he complied with the terms of his probation and refrained from drugs and alcohol while on probation because he was subject to random drug tests by his then-employer as well as his probation officer. He has never received an alcohol-related diagnosis. Since this incident, he estimated he has continued to drive while intoxicated approximately five times yearly, which he acknowledged demonstrated poor judgment. (SOR ¶¶ 1.d, 4.b) (Tr. 45-52; GE 1-2, 9, 14)

In June 2020, Applicant was arrested and charged with controlled dangerous substance (CDS), distribution with a firearm, drug trafficking, CDS possession with intent to distribute narcotic, loaded handgun in vehicle, loaded handgun on person, handgun in vehicle, and handgun on person. (SOR ¶¶ 1.e, 2.b, 4.b) He was driving a friend around in the friend's car and pulled over so his friend could talk to someone. As he stood outside the car, multiple individuals came to the car, got inside it, dropped things off in it, and left. Police arrived and questioned him about the activity, he responded he did not know the individuals or what they were doing, and he provided them with his identification and registration, as requested. He consented to a search of the car and the police found heroin and a firearm, which he denied were his. (Tr. 15-16, 52-67, 94-95; GE 1-2, 5, 14)

Applicant was arrested since he was the driver of the car and possessed the car keys. He was taken to the police station, denied bail at his first court hearing, and held for 30 days. He was then released but placed on house arrest and required to wear an ankle monitor until his next court hearing. He was permitted to leave his home from 7:00 am to 7:00 pm to work for his father's painting business, but he was required to provide receipts to document his whereabouts. (Tr. 15-16, 52-67, 94-95; GE 1-2, 5, 14)

In February 2021, Applicant was arrested on a bench warrant in connection with these charges for violating the terms of his house arrest. (SOR ¶¶ 1.f, 4.b) He failed to provide an address of one of the houses he painted for his father, turn in certain receipts, and pay his home detention fees. He turned himself in and was held for four days before

he was released. He appeared in court again in July 2021 and the charges were *nolle prosequi*. He completed the process to have these charges expunged from his record. He has not been arrested or charged with any offense since 2021. He acknowledged he does not have a perfect past and stated he has changed his life around. (Tr. 15-16, 52-67, 94-95, 102-107; GE 1-2, 5, 14)

#### **Guideline H: Drug Involvement and Substance Misuse**

Applicant used marijuana, with varying frequency, from approximately October 2009 to October 2019. He denied using marijuana while he was ordered to abstain from drugs during his 2015 probation for DWI, as set forth above in SOR ¶ 1.d. (SOR ¶¶ 2.a, 4.b) He acknowledged he occasionally used drugs while on probation in 2010 for battery and in 2013 for second degree assault and disorderly conduct, as set forth above in SOR ¶¶ 1.a and 1.b, respectively, but he could not recall whether he was ordered to refrain from drugs during these probationary periods. He maintained, as he stated in his Answer, he did not use drugs while he was on probation for his 2015 DWI. (Tr. 37-44, 47-48, 67-73; GE 1-2)

Applicant smoked marijuana or ate marijuana edibles three to five times per month from 2009 to 2019. He did so recreationally, by himself or with friends, and to manage pain from a surgery in July 2019 after he was shot in the leg while at a house party. He lost eight pints of blood and almost died, and he was in the hospital for nearly two weeks. He obtained the marijuana or marijuana edibles from friends or he purchased them at a store in a city where they are legal. He stopped using marijuana when he went back to work in November 2019. He stated he does not plan to use marijuana or any illegal drug in the future because he closed that chapter in his life and he has no desire to do so. He stated he does not associate with anyone involved with illegal drugs. He is subject to random drug testing by his employer. (Tr. 37-44, 47-48, 67-73; GE 1-2)

#### **Guideline F: Financial Considerations**

The SOR alleged Applicant failed to file his federal income tax returns, as required, for at least tax years 2012 through 2017, 2019, and 2021. (SOR ¶¶ 3.a, 4.b) It also alleged he failed to file his relevant state income tax returns, as required, for at least tax years 2013 through 2021. (SOR ¶¶ 3.b, 4.b) It also alleged he is indebted to the federal government for delinquent taxes of approximately \$18,237 for tax years 2016 through 2020 (SOR ¶ 3.c), and he is indebted to the state tax authority, as evidenced by a tax lien entered against him in September 2022 in the approximate amount of \$14,179 (SOR ¶ 3.d). (Tr. 14-15, 46, 69-96, 102-107; GE 1-4)

Applicant stated he previously worked with a tax professional to resolve his tax issues for tax years 2015 and 2016, but that individual did not file those returns on his behalf. He began working with another tax professional in October 2021 to resolve his outstanding federal and state tax issues. He believed this individual filed his federal income tax returns for tax years 2015 to 2020 in November 2021 and they were awaiting IRS review. He also believed this individual filed his relevant state income tax returns. He stated he would confirm this information with the tax professional. He intends to negotiate

a payment arrangement to resolve his outstanding taxes. (Tr. 14-15, 46, 69-96, 102-107; GE 1-4)

Although June 2022 IRS tax account transcripts reflect Applicant filed his federal income tax return for tax year 2019 in May 2020 and had a zero balance, Applicant was unsure if he filed his tax year 2019 tax return. He stated the tax professional told him it might be caught in the IRS backlog due to the COVID-19 pandemic. He acknowledged he worked in 2019 and his W-2 wage and tax statement reflects an annual income of \$61,898. The transcripts also reflect there were no federal income tax returns filed for tax years 2016, 2017, and 2021, and he acknowledged he had not yet filed his federal income tax return for tax year 2022. He failed to provide documentation to corroborate his testimony that he filed his federal income tax returns for tax years 2012 through 2017 and 2021. In addition, the transcripts reflect Applicant only made a one-time payment of \$70 to the IRS in January 2023, for tax year 2018. Those same transcripts reflect he owed \$6,666 and \$1,514 for tax years 2018 and 2020, respectively. He acknowledged he had not made any payments toward his outstanding state taxes. The record does not contain any documentation of any other efforts to pay his outstanding federal or state taxes. (Tr. 73-81, 95-96; GE 1-4)

Applicant also has a \$31 delinquent medical debt (SOR ¶ 3.e), six delinquent consumer debts totaling \$26,959 (SOR ¶¶ 3.f-3.i, 3.r-3.s), and eight delinquent federal student loans totaling approximately \$41,167 (SOR ¶¶ 3.j-3.q). His financial issues are established by his admissions in his September 2021 security clearance application (SCA), his responses to interrogatories, IRS tax account transcripts, court records, and credit bureau reports (CBR) from December 2021, September 2022, and January 2023. He attributes his financial issues to a number of factors, to include his periods of unemployment, underemployment, relocation costs in 2016, an eviction, car issues, a failed business, his health issues after he was shot in 2019, his legal issues related to his 2020 charges, and his financial illiteracy. (Tr. 14-15, 46, 69-96, 102-107; GE 1-4, 6, 11-13)

Applicant has not paid the medical debt in SOR ¶ 3.e. He has not done so because he has not investigated the debt. (Tr. 81, 99; GE 11)

SOR ¶ 3.f is a rental account in collection for \$3,850, due upon Applicant's eviction by a prior landlord. Applicant denied this debt because he disputed the amount. He stated he contacted the creditor and was told they would charge off this debt. (Tr. 81-82, 97; GE 11)

SOR ¶ 3.g is an auto loan in collection for \$2,992. Applicant co-signed this loan and the car was repossessed in February 2021, when he was on house arrest and could not make the monthly payments. The car was sold, and he owed a deficiency balance of \$4,000. Documentation reflects he settled this debt for \$957 in April 2022, entered a payment arrangement of \$100 monthly, made his first payment of \$100 in April 2022, and was scheduled to make monthly payments from May 2022 to January 2023 to resolve this debt. He acknowledged his payments toward this debt were sporadic. He intends to transfer ownership to the other co-signor or resolve it. (Tr. 82-84; GE 1-3, 11-13)

SOR ¶ 3.h is a wireless account in collection for \$4,136. Applicant co-signed for another individual's cellular phone. He disputed this debt with Credit Karma because he wants to transfer ownership to the other co-signor. (Tr. 84-85; GE 3, 11-13)

SOR ¶ 3.i is an auto loan in collection for \$14,335. Applicant's car was repossessed in 2016, when he could not afford to make his monthly car payments after he relocated from one state to another. He stated he contacted the creditor to dispute the outstanding balance and attempt to settle the debt. (Tr. 85-86; GE 1-3, 11-13)

SOR ¶ 3.r is a cable account in collection for \$346. Applicant did not recall having an outstanding balance on this account. He stated he made a payment toward this debt in the fall of 2021. He acknowledged he did not continue paying this debt due to negligence. He intends to resolve this debt. (Tr. 88-89, 99-100; GE 2-3, 13)

SOR ¶ 3.s is an electric bill with an apartment complex in collection for \$1,300. Applicant was evicted from the apartment due to an outstanding electric bill he could not pay because of car issues. When he attempted to pay the bill, the landlord had already commenced eviction proceedings, so he did not pay it because he needed the money to relocate. He stated he contacted the creditor and negotiated a payment arrangement to resolve this debt, and he believed his remaining balance was approximately \$1,200. He did not provide documentation to corroborate his claims. (Tr. 89; GE 1-2, 6)

Applicant obtained his federal student loans between 2007 and 2010 to attend college. He acknowledged he had not made any payments toward his loans since 2010. In approximately April 2023, he enrolled in the U.S. Department of Education Fresh Start Program, consolidated his student loans, and entered a payment arrangement scheduled to begin in November 2023. The most recent CBR from January 2023 no longer reports his student loans as delinquent. He acknowledged he had not made any payments toward his student loans as of the date of the hearing and he was past due. (Tr. 86-88, 100-101; GE 1-3, 11-13)

As of the date of the hearing, Applicant's annual salary was \$108,000, or \$5,300 net monthly. After paying his monthly expenses, he estimated a monthly net remainder of approximately \$1,800 to \$2,200, which did not include payments to any of the SOR debts. He stated he was current on his child support obligation, which is automatically deducted from his paycheck. He has never received financial counseling. (Tr. 97-100; GE 1-3)

### **Guideline E: Personal Conduct**

Between about 2017 and June 2020, Applicant threatened physical harm to his child's mother on several occasions and was escorted off her work site by security. (SOR ¶ 4.a) (GE 8) He denied physically harming her but acknowledged he verbally threatened her with physical harm on occasion when they argued. In January 2020, he went to her workplace to confront her about returning his apartment key. He was escorted by security personnel out the building, where he yelled at her. She petitioned the court for a protective order against him in June 2020. The order was not granted, she appealed, and the appeal

was dismissed in November 2020. He testified that he and the child's mother have a "good co-parenting relationship," "are in a much better place," and he has visitation rights with his child, for whom he pays monthly child support. (Tr. 26-27, 89-97; GE 1-3, 7-8)

## **Policies**

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(a), 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 Exec. Or. 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* Exec. Or. 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 pertaining to criminal conduct as: “[c]riminal 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.”

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. I considered the following disqualifying condition relevant:

(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 has a history of criminal involvement from 2010 to 2021. AG ¶ 31(b) is established.

AG ¶ 32 provides the following relevant mitigating conditions:

(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 criminal involvement from 2010 to 2021 continues to raise doubts about his reliability, trustworthiness, and judgment. Although he ultimately received PBJ for the charges in 2010, 2013, and 2015, he admits he engaged in the underlying criminal conduct. He also admits he has continued to drive while intoxicated, approximately five times yearly, despite his 2015 DWI charge and related probation. In addition, while the charges from 2020 were *nolle prosequi*, his underlying conduct and his related 2021 arrest for violating the terms of his house arrest reflect poor judgment. He needs more time to show he has matured and learned from his poor decisions. I find that not enough time has elapsed since Applicant’s criminal behavior and without recurrence of criminal activity, and it continues to cast doubt on his reliability, trustworthiness, and judgment. AG ¶¶ 32(a) and 32(d) are not established.



## 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 the following applicable conditions that could raise security concerns under AG ¶ 25:

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

Applicant used marijuana with varying frequency from October 2009 to October 2019, excluding the period when he was on probation for his DWI from September 2015 to September 2016. He was also arrested and charged with drug-related offenses in June 2020 after police found heroin and a firearm, which he denied were his, in the car he had been driving. AG ¶¶ 25(a) and 25(c) apply.

AG ¶ 26 provides the following potentially relevant mitigating conditions:

- (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;
- (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 stated he does not associate with individuals who use illegal drugs. He also stated he closed the chapter in his life wherein he used marijuana, and he has no intention of using marijuana or illegal drugs in the future. He did not provide a signed statement of intent to abstain from all drug involvement and substance misuse. As discussed in my analysis under Guideline J, while the charges from 2020 were *nolle prosequi*, his underlying conduct reflects poor judgment. His use of marijuana over the course of nine years and his conduct underlying his 2020 drug-related charges continue to cast doubt on his reliability, trustworthiness, and judgment. I find that AG ¶¶ 26(a), 26(b)(1), 26(b)(2), and 26(b)(3) are not established.

#### **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;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant has a history of not being able to pay his debts. He also failed to file his relevant federal and state income tax returns and pay his outstanding federal and state taxes, as required. AG ¶¶ 19(a), 19(c), and 19(f) are established.

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

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

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Conditions beyond Applicant's control contributed to his debts. The first prong of AG ¶ 20(b) applies. For the full application of AG ¶ 20(b), he must provide evidence that he acted responsibly under his circumstances. Although the information reflected in the June 2022 IRS tax account transcript about Applicant's wages for tax year 2019 is inaccurate, that transcript nonetheless reflects he filed his federal income tax return for that tax year in May 2020. As such, I find that AG ¶ 20(b) applies only to his filed federal income tax return for tax year 2019, and I find that part of SOR ¶ 3.a in his favor.

Applicant has not submitted evidence of responsible conduct for his remaining financial issues. He did not provide documentation to corroborate his claims he has filed his federal income tax returns for tax years 2012 through 2017 and 2021, or his state income tax returns for tax years 2013 through 2021. Other than his one-time payment of \$70 to the IRS in January 2023 for tax year 2018, he has not made any other efforts to resolve his outstanding taxes. He did not provide documentation to corroborate any of his claims of payment or resolution for his remaining SOR debts, to include his student loans. While the January 2023 CBR reflects his student loans were no longer delinquent, he acknowledged he had not made any payments toward them and he was past due. He also did not provide documentation to corroborate his claims that he disputed the debts in SOR ¶¶ 3.f, 3.h, and 3.i. He has not received financial counseling. He needs more time to establish he has his finances under control. I find that these financial issues continue

to cast doubt on his reliability, trustworthiness, and judgment. AG ¶¶ 20(a), 20(b), 20(c), 20(d), 20(e) and 20(g) do not apply.

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

(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;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(1) untrustworthy or unreliable behavior to . . . ;

(2) any disruptive, violent, or other inappropriate behavior; 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.

As previously indicated, Applicant's conduct in SOR ¶¶ 1.a-1.f, 2.a, and 3.a-3.b is cross-alleged under Guideline E as SOR ¶ 4.b. I addressed that conduct, which is sufficient for an adverse determination, in my analyses under Guidelines J, H, and F, above. As such, AG ¶ 16(c) does not apply to SOR ¶ 4.b and I find that allegation in Applicant's favor.

Applicant threatened physical harm to his child's mother on several occasions between 2017 and 2020, and during one such occasion he was escorted by security off her work site. His conduct raises questions about his judgment, trustworthiness, and reliability. AG ¶¶ 16(d)(1), 16(d)(2), and 16(e)(1) apply to SOR ¶ 4.a.

AG ¶ 17 describes the following relevant conditions that could mitigate the personal conduct security concerns:

(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

(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.

Applicant has not engaged in similar such conduct since 2020, and he stated that he and his child's mother have a good co-parenting relationship and he has visitation rights with his child. However, his problematic conduct with his child's mother between 2017 and 2020 was not minor or infrequent, did not happen under such unique circumstances that it is unlikely to recur, and continues to cast doubt on his reliability, trustworthiness, and judgment. While he acknowledged his behavior, he has not demonstrated he has obtained counseling or taken other positive steps to alleviate the circumstances that led to it and that it is unlikely to recur. AG ¶¶ 17(c) and 17(d) do not apply to SOR ¶ 4.a.

### **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 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 J, H, F, and E 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 and substance misuse, financial considerations, and personal conduct security 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 J: Subparagraphs 1.a - 1.f:	AGAINST APPLICANT Against Applicant
Paragraph 2, Guideline H: Subparagraph 2.a:	AGAINST APPLICANT For Applicant, in part (use of marijuana while prohibited by his probation for SOR ¶ 1.d), and Against Applicant, in part (use of marijuana, with varying frequency, from October 2009 to October 2019)
Subparagraph 2:b	Against Applicant
Paragraph 3, Guideline F: Subparagraph 3.a:	Against Applicant For Applicant, in part (filed federal income tax return for tax year 2019), and Against Applicant, in part (failure to file federal income tax returns for tax years 2012 to 2017 and 2021)
Subparagraphs 3.b-3.s:	Against Applicant
Paragraph 4, Guideline E: Subparagraph 4.a: Subparagraph 4.b:	Against Applicant Against Applicant For Applicant

## **Conclusion**

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

---

Candace Le'i Garcia  
Administrative Judge