



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



In the matter of:	)	
	)	
	)	ISCR Case No. 23-00896
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Troy Nussbaum, Esq., Department Counsel  
For Applicant: *Pro se*

04/26/2024

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline E, personal conduct, Guideline F, financial considerations, and Guideline J, criminal conduct. Eligibility for access to classified information is denied.

**Statement of the Case**

On November 9, 2023, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines E, F, and J. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

On November 17, 2023, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s file of relevant material (FORM), and Applicant received it on January 5,

2024. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 2 through 10 (Item 1 is the SOR). As part of the FORM, the Government amended the SOR to include additional allegations ¶¶ 1.b, 1.c, 1.d, and 3.b. The FORM directed Applicant to provide an answer to the additional allegations as part of his response to the FORM. It noted that failure by Applicant to admit or deny the additional allegations would be deemed a denial. Applicant responded to the FORM, and provided documentary evidence that was marked as Applicant's Exhibits (AE) A through F. He did not admit or deny the additional allegations in the FORM. His failure to respond is deemed a denial. There were no objections to any of the documentary evidence offered, and it is admitted in evidence. The case was assigned to me on March 27, 2024.

### **Findings of Fact**

Applicant admitted the SOR allegations in ¶¶ 1.a, 2.a, 2.b, and 2.c. He denied the SOR allegations in ¶¶ 2.d, 2.e and 3.a. He did not provide a response in his FORM to the allegations in the amended SOR to ¶¶ 1.b, 1.c, 1.d, and 3.b, and therefore I will consider that he denies these allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 39 years old. He served in the military from 2002 until his honorable discharge in 2012 in the paygrade E-5. He married in 2005 and divorced in 2014. He has two minor children from the marriage. He earned an associate degree in 2014 and a bachelor's degree in 2016. He has worked for his present employer, a federal contractor, since February 2015. Prior to his present job, he worked for federal contractors from November 2014 to February 2015, and August 2013 to August 2014. He had periods of unemployment from his military discharge in May 2012 to August 2013 and August 2014 to November 2014. (Items 3, 4)

While serving in the military, in about August 2011, Applicant went to a Uniform Code of Military Justice (UCMJ) Article 15 hearing, nonjudicial punishment (NJP), for two violations of Article 92, failure to obey orders by committing sexual harassment and fraternization. The first charge states that in September 2010, Applicant made unwanted sexual advances toward X by repeatedly placing his hand on her thigh and then standing over her while she was seated in a chair and placing his hands on the armrest thereby not allowing her to stand up. In addition, he was charged from August 2010 to February 2011, with fraternizing by attempting to establish personal and romantic relationships with several subordinates in his section and his company. An investigation was conducted by the Naval Criminal Investigative Service (NCIS) that included numerous statements from victims and witnesses. They described firsthand that Applicant used his master key to enter their barracks rooms uninvited, made unwanted advances, unwanted touches by hitting a female military member on her buttocks and acting inappropriately. There is substantial evidence in the record supporting the charges. (SOR ¶ 1.b) (Item 8)

Applicant confirmed his rights under UCMJ Article 15, including the right to consult with a military defense counsel and the right to refuse NJP and go to a court-martial. He

waived his rights and elected to have the charges adjudicated at NJP. He was found guilty of the offenses. He chose not to appeal. (Item 8)

Applicant was interviewed by agents from the NCIS on February 22, 2011. He was afforded his UCMJ Article 31b rights. He denied he engaged in any inappropriate contact with victims of the investigation. He denied he improperly used his master key at the barracks. I have considered the numerous statements in the record from the victims and witnesses and conclude there is substantial evidence that Applicant committed the UCMJ offenses and then was untruthful when he was interviewed by NCIS in February 2011.<sup>1</sup> (SOR ¶ 1.c) (Item 8)

Applicant was interviewed by a government investigator in February 2016 as part of the security investigation process. He denied he committed the NJP offenses. He provided a narrative about an encounter at a barbeque, stating he placed his hands on his accuser's shoulder, when in fact the offenses occurred when he entered a female military member's barrack's room uninvited and repeatedly placed his hands on her thigh despite requests to discontinue the behavior and then placed his hands on the armrest of her chair, not allowing her to get up. His statements to the government investigator obviously referred to a different encounter and not those that were adjudicated at his NJP and as detailed by the victims, witnesses, or the charges of which he was found guilty. He claimed he did not act inappropriately. He claimed he was instructed by his leadership to accept the NJP and "not make waves." He disclosed his NJP on his September 2015 security clearance application. He claimed innocence. In his response to the FORM, he again claimed innocence. Based on the record evidence, I find he committed the offenses and was untruthful to the government investigator about the sexual harassment and fraternization offenses for which he went to NJP. (SOR 1.d) (Items 4, 8, 9)

During Applicant's February 2016 interview he admitted he had a few small issues while in the military concerning disrespect, but he did not receive military discipline. The investigator confronted him with service record entries where he was counseled for disrespect (UCMJ Article 91) to a senior noncommissioned officer. He admitted this incident occurred. He was not recommended for promotion in March 2006 due to lack of judgment, motivation, and maturity due to the incident. He was again not recommended for promotion in May 2006. In May 2010, he was counseled for lack of judgment while on liberty because he was involved in disorderly conduct while evading military police. He disagreed with the information when he was confronted with it by the investigator. He was counseled in January 2011 for unauthorized overnight special liberty on December 20, 2010. In April 2012, he was counseled for failure to demonstrate high standards of

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<sup>1</sup> Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." See, e.g., ISCR Case No. 17-04166 at 3 (App. Bd. Mar. 21, 2019) (citing Directive ¶ E3.1.32.1). "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994); ISCR Case No. 04-07187 at 5 (App. Bd. Nov. 17, 2006).

leadership, professional competence, and personal behavior. He attributed some of the behavior listed in his military record to being young, immature and in the wrong place at the wrong time. He told the investigator that he received more accolades than disciplinary issues while in the military. (Item 9)

In June 2021, Applicant was arrested for felony possession of a controlled substance, cocaine. (SOR ¶ 1.a) During another background interview in November 2022, he explained his version of events to a government investigator. He stated that he went to a Hookah lounge by himself. He met two women, and they invited him to go to another Hookah lounge where he had never been. The two women were going to order an Uber, but Applicant offered to drive the three of them because he was not drinking alcohol. They went to the new Hookah lounge and his cell phone battery was low, so he decided to leave it in the car to charge while they went into the lounge. He said the women left their purses in the car and took out their wallets and phones. They paid the cover charge to enter the lounge. After being in the lounge for a while he went outside to his car to retrieve his phone. When he did, he noticed a small baggie containing a white substance next to one of the purses. He told the investigator he “freaked out” because he has a job on base and cannot be around any drugs. He decided to get the drugs out of his car. He took the bag and started to walk towards the entrance of the lounge and intended to throw the drugs away in a trashcan. He did not want to throw it on the ground or leave it in his vehicle. He was going to tell the women to retrieve their purses from his vehicle. (Item 10)

There was a police presence in the parking lot, so Applicant put the baggie in his pocket. He was stopped by the police as he approached the door of the lounge. Applicant told the investigator that he was told by the police he was trespassing and could not go inside the lounge. He was confused and told the police he had just been in the lounge and had paid the cover charge. He was told to put his hands behind his back, and he was searched. The police found the baggie and tested it and determined it was cocaine. Applicant was arrested. He hired an attorney. His attorney told him to take a drug education class. He took a one-week class and provided his certificate of completion to his lawyer. He told the investigator that the charges were then dismissed. Applicant did not inform his employer or his supervisor of his arrest or advise anyone in the military of his arrest. He said he was told by his lawyer not to tell his employer, and he followed this instruction. (Item10)

The police report provides a different version of the event. It reported that Applicant had been told by the owner of the Hookah lounge to leave the establishment. Applicant returned to the property and was advised multiple times to leave, and he refused to do so, which resulted in his arrest for criminal trespass. At that point, Applicant was searched, and a plastic baggie was found in his pants pocket. It was tested and determined to be cocaine. The police report does not state that Applicant denied the cocaine belonged to him or that he identified that it belonged to the two women he had befriended. He was then charged with possession of cocaine and was issued a written criminal trespass warning. In October 2021, the District Attorney issued a No Charge Form, citing the reason as “Prosecutorial Discretion” for the criminal trespass charge. In April 2022, a No

Charge Form was issued for the possession of a controlled substance charge. The reason stated for the No Charge: "Defendant completed a Drug Offender Education Program." In Applicant's answer to the SOR, he admitted he was arrested, but denied the cocaine belonged to him. He denied the trespassing charge. He stated the charges were dropped. He reiterated the same information that he provided to the investigator. (Items 2, 5)

The SOR alleged five delinquent debts totaling approximately \$69,700. Applicant did not disclose any delinquent debts on his March 2022 security clearance application (SCA). In November 2022 he told the investigator that he did not have the specific information or details on his financial accounts, so he did not list his debts or accounts. He admitted to the investigator that he had delinquent debts.

During his November 2022 interview, Applicant told the investigator that he would contact all of his creditors and would attempt to establish payment plans. He would provide documentations for all his payment arrangements if he could and provide receipts of accounts he settled or resolved. (Item 10)

SOR ¶ 2.a (\$46,158) is a credit card debt. During his 2022 interview, Applicant said he had this credit card with his ex-wife. They both used the card. When they divorced, he took responsibility for the debt. He could not keep up with the payments. The account is in collection and listed on his credit report as an individual account. In his answer to the SOR, he stated that his ex-wife had maxed out the credit card, and he was in the process of repairing his credit and making payment arrangements. Applicant did not provide any documents to show he has taken any action to resolve this debt. In his FORM response, he did not provide any information about the status of this debt. It is not resolved. (Items 2, 6, 7, 10)

Applicant admitted the military credit card debt in SOR ¶ 2.b (\$10,993). He told the investigator that he tried to negotiate a payment plan, but the creditor wanted a lump-sum payment. He was not able to pay the amount. He stopped paying the debt when he was unemployed. He has been employed since 2015. His goal was to resolve this debt, and he said he would contact the creditor again to establish a payment plan. Applicant's credit report shows the last activity on this account was in September 2016. In his SOR answer, he said he had a payment arrangement that he was making payments on for the past year. He provided a document from November 2023 that showed scheduled payments would begin in December 2023. He also provided a document showing he made the payments from February 2023 through November 2023. In his FORM response, he did not provide proof of additional payments. It is likely he continued to make payments. This debt is being resolved. (Items 2, 6, 7, 10)

The debt in SOR ¶ 2.c (\$8,076) is a collection account for a delinquent loan. Applicant told the investigator that he could not recall when he acquired the loan and why. He could not afford the payments, so he stopped paying it. He said he contacted the creditor but could not reach a settlement agreement. In his answer to the SOR, he admitted the debt and said he had talked to a representative who was willing to settle the debt. He said he would arrange paying the debt when he received his income tax refund.

He did not provide an update on the status of this debt in his FORM response or documented proof of any action he may have taken. It is not resolved. (Items 2, 6, 7, 10)

The debt in SOR ¶ 2.d (\$3,639) was a cell phone account. He and his brother used the account. He told the investigator that he would pay this account. In his answer to the SOR, he stated he settled the debt and provided proof that he resolved it in January 2023. He also settled the medical debt in SOR ¶ 2.e (\$834) for \$250 in October 2022. He provided documentary proof. (Items 2, 10)

In Applicant's FORM response, he explained he was proud of his military service. He said he embodied the core values of military service and received recommendations from his superiors and for his exceptional job performance. He attributed his financial debts to his ex-wife. He reiterated that he planned to repay the loan owed in SOR ¶ 1.c after he received his income tax refund. He continued to maintain his innocence regarding the NJP charges against him. He said he was young and afraid. (AE A)

Applicant provided letters from 2012 from two civilians for whom he worked while he was in the military. One for 8 months and another for 11 months. He was described as proficient, intelligent, a creative problem-solver, professional, a leader, and a detail-oriented employee. He could be counted on to complete tasks outside of his regular assignment with no supervision. He sought new methods to improve effectiveness. He also provided a letter from 2013 from a military officer. He was described as driven, intelligent, dedicated, hardworking, mature, and honorable. He excelled at every given task and had an outstanding logical thought-process. He had a strong work ethic, integrity, and conviction to do the right thing. (AE B, C, D, E)

Applicant provided a copy of his military discharge document which reports he was awarded the Good Conduct Medal (two awards), Navy-Marine Corps Achievement Medal, National Defense Service Medal, Certificate of Commendation and Letters of Achievement, along with other unit commendations and campaign medals. (AE F)

Any derogatory information that was not alleged will not be considered for disqualifying purposes but may be considered in the application of mitigating conditions and in a whole-person analysis.

## **Policies**

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching

adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision.”

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

Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline J: Criminal Conduct**

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

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

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

In August 2011 Applicant went to an UCMJ Article 15 NJP for violations of Article 92 for sexual harassment and fraternization. He was afforded his rights and was found guilty. He did not appeal. In June 2021, he was arrested for felony possession of cocaine and criminal trespass. The controlled substance was found on his person. The charges subsequently were not prosecuted. The above disqualifying conditions apply.

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

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

(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 continues to deny that he did anything wrong for the offenses he went to NJP. He had an opportunity to refuse NJP and go to a court-martial and did not. He had an opportunity to appeal his conviction, he did not. There is substantial evidence he committed the offenses. Applicant had cocaine on his person when he was arrested. The charge was later not prosecuted after he completed a drug education course. He denies any wrongdoing and has not taken responsibility for his conduct. Although there is a significant gap in time between his 2011 and 2021 criminal conduct, because Applicant requested a determination on the record without a hearing, I had no opportunity to question him about his criminal conduct or evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). Applicant did not present sufficient mitigating evidence to conclude future criminal conduct is unlikely to recur. His conduct casts doubt on his reliability, trustworthiness, and judgment. The above mitigating conditions 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 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. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following 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 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 group. Such conduct includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

Applicant's NJP conduct and arrest for cocaine possession were addressed under the criminal conduct guideline (SOR ¶¶ 3.a and 3.b) and cross-alleged under the personal conduct guideline (SOR ¶¶ 1.a and 1.b). Applicant went to NJP for sexual harassment and fraternization when he inappropriately touched a fellow service member and other misconduct. He was arrested for cocaine possession in 2021. His 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 criminal conduct guideline. 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.

Applicant was interviewed by NCIS in February 2011 as part of their criminal investigation into sexual harassment and fraternization. Applicant denied any inappropriate contact with the victims. There is substantial evidence he committed the offenses. When interviewed by NCIS he deliberately provided a false statement. When he was interviewed in February 2016 by a government investigator as part of his background investigation, he again deliberately provided a false statement. AG ¶ 16(b) applies.

The following mitigating conditions under AG ¶ 17 are potentially applicable to the disqualifying security concerns based on the facts:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (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; and
- (f) the information was unsubstantiated or from a source of questionable reliability.

Applicant did not provide evidence that he made a prompt, good-faith effort to correct his falsification. His sexual harassment, fraternization, and possession of cocaine offenses are not minor. The information was substantiated and from reliable sources. His failure to be honest during a criminal investigation and security clearance investigation raises serious concerns. As stated above, because Applicant requested a determination on the record without a hearing, I had no opportunity to question him about his statement to investigators or evaluate his credibility and sincerity based on demeanor. The security clearance process relies on those seeking a clearance to be honest and forthcoming. Applicant failed to do so, which casts doubt on his reliability, trustworthiness, and good judgment. The above mitigating conditions do not apply.

#### **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).

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant had delinquent debts totaling approximately \$69,700. There is sufficient evidence to support the application of the above disqualifying conditions.

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

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the persons control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant provided evidence that he has paid or has a payment agreement for the debts in SOR ¶¶ 2.b, 2.d and 2.e. AG ¶ 20(d) applies to these debts.

Applicant admitted that the debt in SOR ¶ 2.a (\$46,145) was for a credit card that he and his wife used while they were married, and he assumed responsibility for it when they divorced. He later claimed it was his wife who spent excessively. He did not provide evidence of action he has taken to resolve this large debt. The debt in SOR ¶ 2.c (\$8,076) is for a loan he cannot recall the specifics about. He stated in 2022 that he got behind in payments when he was unemployed. He has been employed since 2015. Although, he stated he intended to pay it in the future, he did not provide evidence that he has resolved or is resolving the debt. His unemployment and divorce were beyond his control. Applicant has not provided evidence that he acted responsibly once he resumed employment to resolve these debts. His debts remain ongoing. He did not provide evidence he has participated in financial counseling. There are not clear indications that his financial issues are under control. AG ¶¶ 20(a), 20(b) and 20(c) do not apply.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines J, E, and F in my whole-person analysis.

The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns raised under Guideline J, criminal conduct, Guideline E, personal conduct, and Guideline F, financial considerations.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	Against Applicant
Subparagraphs 2.d-2.e:	For Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a-3.b:	Against Applicant

### **Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge