



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



In the matter of:)
)
) ISCR Case No. 23-00893
)
)
Applicant for Security Clearance)

Appearances

For Government: Karen A. Moreno-Sayles, Esq., Department Counsel
For Applicant: Matthew Gianelloni, Personal Representative

07/29/2024

Decision

BORGSTROM, Eric H., Administrative Judge

Applicant mitigated the drug involvement security concerns, and the record evidence did not establish that he deliberately provided false information on his security clearance application or during his security interview. He did not mitigate the criminal conduct and financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On August 15, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline J (criminal conduct), Guideline H (drug involvement and substance misuse), Guideline E (personal conduct), and Guideline F (financial considerations). The DCSA CAS acted 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 implemented by the DOD on June 8, 2017.

In Applicant's November 12, 2023 response to the SOR (Answer), he admitted SOR ¶¶ 1.a., 2.a., 4.a., 4.e., and 4.f., and he denied the remaining allegations. He

provided additional information and explanations about his illegal drug use, criminal charges, and delinquent accounts. He did not attach any documents to his response. He requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge.

On December 28, 2023, the Government was ready to proceed to hearing. I was assigned this case on February 2, 2024. On March 26, 2024, DOHA issued a Notice of Hearing, scheduling a hearing by video teleconference for April 15, 2024. The hearing proceeded as scheduled. The Government proffered 13 exhibits, which I admitted as Government Exhibits (GE) 1 through 13 without objection. Applicant and one witness testified, and Applicant did not submit any documentary evidence. At Applicant's request, I held the record open until May 3, 2024, to provide him an opportunity to supplement the evidentiary record. DOHA received the hearing transcript (Tr.) on April 24, 2024. On May 5, 2024, Applicant provided an email with six attachments, which I admitted as Applicant Exhibits (AE) A through G without objection. The evidentiary record closed on May 5, 2024.

Amendment to the SOR

At the outset of the hearing, the Government moved to amend SOR ¶ 2.a. to read, "You used marijuana with varying frequency from about October 2007 to about February 2022," and to strike the remaining phrases as to Applicant's clearance status at the time of his drug use. Applicant did not object to the amendment. The motion to amend was granted. (Tr. 17-18)

Findings of Fact

Applicant is 35 years old. He graduated from high school in May 2007, and he earned a bachelor's degree in May 2013. From July 2017 to February 2024, he was employed as a solutions specialist for a private company. He quit this position in February 2024 to relocate with his wife to a different state. His employment with a sponsoring DOD contractor is conditioned upon his clearance eligibility. He has been married since September 2022, and he has an eight-year-old child. (GE 1, 3; Tr. 68, 71)

Criminal Conduct

During the summer of 2009, Applicant was employed as a summer intern with a DOD contractor. He and his fellow interns resided together. In July 2009, the interns held a party, where Applicant fondled a woman he knew to be heavily intoxicated and possibly unconscious (SOR ¶ 1.a). Applicant detailed this incident in his April 9, 2014 Electronic Questionnaire for Investigations Processing (e-QIP). In an addendum to the e-QIP, he stated:

On July 30, 2009, I hosted a party at the house I was residing for the summer internship with [the DOD contractor in State A]. Liquor was purchased by two of the interns who were of legal drinking age. Later on that night a young lady was taken upstairs to one of the bedrooms due to intoxication. [S]ome time later people begin dispersing, going to the store,

etc. and I go upstairs to use the bathroom. [I]n the process I went into the room where the young lady was. I nudged the door which swung closed and was apparently locked, and was fondling the her [sic]. I began undoing her pants, which she assisted in taking off (it was later mentioned that she thought I was her boyfriend), but stopped when she started convulsing to throw up. I then pulled her pants back up and sat on the floor. [N]ot long after there was banging on the room door because it was locked and people had returned from their runs to check on her. [O]riginally there were going to be no charges, but the mother made her daughter press charges of sexual assault. I was then charged with second and third degree sexual assault for entrapment and nonconcentual [sic] sexual contact. [A] plea bargain was made with the final charges being a misdemeanor second degree assault, with 18 months probation, and mandatory 12 sessions of therapy, with everything being [Probation Before Judgment] in three years from April 2010. (GE 2; Tr. 81)

On his 2014 e-QIP, under Section 20 - Your Police Record, he listed that he had been charged with possession of marijuana in April 2013 and have been charged with "misdemeanor 2nd degree assault" in July 2009. He stated that the drug charge had been dismissed and that he was sentenced to 18 months of probation on the assault charge.

At the hearing, Applicant admitted that he was initially charged with sexual assault in the third degree, a felony. In March 2010, he pled guilty to assault in the second degree, a misdemeanor. He was placed on supervised probation for 18 months, followed by another 42 months of unsupervised probation. He was also required to participate in 12 mental-health counseling sessions. He was not required to register as a sex offender. (Answer; GE 5-6; Tr. 75-79; 113, 115, 127)

At the hearing, Applicant denied intentionally locking the bedroom door. He admitted that he knew the woman was heavily intoxicated, that he unbuttoned and unzipped her shorts, and fondled her. He stopped fondling her when she started convulsing and vomiting. He admitted that he engaged in criminal behavior by his actions. Only Applicant's wife and parents know about this incident. (Tr. 120-124, 127-130)

In addition to Applicant's illegal drug use and purchase discussed below, he was charged with driving while license suspended, a misdemeanor, in July 2019. He pled guilty as charged in August 2019. He was sentenced to probation before judgment. (GE 7)

Drug Involvement

Between 2007 and 2012, Applicant used marijuana on various occasions. He did not use any illegal drugs between 2012 and 2018. In 2018, a regular marijuana user moved into Applicant's residence. This individual regularly provided marijuana to Applicant, and Applicant used marijuana monthly between 2018 and 2020. From 2020 to February 2022, Applicant used marijuana daily to self-medicate for stress and migraines (SOR ¶ 2.a.). Applicant has never sought or obtained a medical marijuana card. He

illegally purchased marijuana on a weekly basis between 2020 and February 2022. (Answer; GE 1; Tr. 131-144)

In April 2013, Applicant's housemates hosted a party. When law enforcement officers responded to a noise complaint, they discovered marijuana. Applicant and his housemates were arrested, handcuffed, and photographed. He was charged with misdemeanor possession of marijuana (SOR ¶ 2.b.). The charge was later dismissed. Applicant credibly testified that the marijuana found by police was not his. (Answer; Tr. 97-100)

In his 2022 e-QIP, Applicant stated that he did not intend to use marijuana in the future. He currently resides with his wife and two relatives, and none of these individuals use illegal drugs. (GE 1)

Falsifications

On May 29, 2014, Applicant was interviewed by an authorized investigator on behalf of the Office of Personnel Management (OPM). During the interview, he volunteered information about the July 2009 incident recounted in the addendum to his 2014 e-QIP. He also admitted the April 2013 possession of marijuana charge and its dismissal. Although the summary of the 2014 interview does not detail Applicant's criminal behavior within the bedroom during the 2009 incident, this information had been included with the 2014 e-QIP. (GE 4; Tr. 82-84)

On August 15, 2022, Applicant certified and submitted an e-QIP. Under Section 22 - Police Record, he answered "NO" to the following queries (SOR ¶ 3.a.):

Have you EVER been charged with a felony offense?

Have you EVER been charged with an offense involving alcohol or drugs?

Under Section 23 - Illegal Use of Drugs or Drug Activity, he admitted that he had used marijuana between October 2007 and February 2022. Under Section 25 - Investigations and Clearance Record, he reported that he was granted a public trust position in August 2014. Under Section 26 - Financial Record, he admitted that he had neither filed nor paid his Federal or state income tax returns for tax year (TY) 2020, and he listed four delinquent accounts. (GE 1)

On September 15, 2022, Applicant was interviewed by an authorized investigator on behalf of the OPM. (already abbreviated) During the interview, Applicant was confronted about being charged with (1) assault - second degree, a misdemeanor; and (2) sex offense - third degree, a felony, in October 2009 (SOR ¶ 3.b.). He claimed that his lawyer at the time of the court proceedings told him that his charges were going to be expunged. After he was confronted, Applicant recounted the incident consistent with his April 2014 e-QIP addendum above. He admitted that he pled guilty to second degree

assault and was placed on probation for five years. He explained that during court-ordered therapy he learned that he may have been abused as a child. (GE 3)

During his September 2022 security interview, Applicant denied any April 2013 possession of marijuana charge. He admitted using marijuana on multiple occasions between 2007 and 2012 and between 2018 and February 2022. He denied any illegal drug use between 2012 and 2018. He explained that between 2018 and 2020, he used marijuana monthly to reduce stress and aid his sleep. Between 2020 and February 2022, he used marijuana daily. (GE 3)

During his September 2022 security interview, Applicant admitted that he had failed to file his Federal and state income tax returns for TY 2020 and TY 2021. He explained that he had previously claimed his child as a dependent. When he no longer claimed his child as a dependent, he owed income taxes which he could not pay. During the interview, he was also confronted about six unresolved delinquent accounts. He agreed with four of the accounts but was unfamiliar with two of the accounts. He attributed his financial delinquencies to lower income and a recent reduction in sales commissions. (GE 3)

At the hearing, Applicant was questioned about the omitted 2009 felony charge on his 2022 e-QIP and during his 2022 OPM interview. He testified that he had completed the e-QIP late at night and that he had interpreted Section 22 to inquire as to felony convictions. He explained that he had similarly misunderstood the investigator to be asking about convictions. He further explained that, at the time of his 2010 plea deal, his criminal lawyer told him that once his probation was completed the charges would be expunged and he was not required to mention the felony charges. He testified that he recalled his attorney's advice when he completed his 2022 e-QIP. He added that he listed his 2009 offense on his 2014 e-QIP because he had been specifically instructed to do so by the individual who directed him to complete that e-QIP. (Tr. 86-95)

Applicant did not provide an explanation for why he did not follow this advice when he completed his 2022 e-QIP. He testified that he replays the 2009 incident regularly in his mind, but also testified that the details were "fresh" at the time of the 2014 e-QIP versus the 2022 e-QIP. His testimony reflected confusion as to the terms "charge" and "conviction." He also testified that he had completely forgotten about the dismissed 2013 drug charge. He averred that he did not deliberately omit the 2009 felony offense or 2013 drug offense due to concerns about his clearance eligibility (Tr. 101-108)

Financial Considerations

SOR ¶ 4.a. This account was placed for collection in July 2021 in the approximate amount of \$233. As of the hearing, Applicant had not paid this debt. After the hearing, Applicant provided a one-page note or text message, without any authorship, identifying information, or account numbers. This documentary evidence is insufficient to establish payments or resolution of this account. **This debt is not resolved.** (GE 9-12; AE C; Tr. 174)

SOR ¶ 4.b. This vehicle loan was incurred in October 2015 and became delinquent in about August 2016. The vehicle was later voluntarily repossessed. This account was charged off in the approximate amount of \$14,063 following the repossession. Applicant has not taken any steps to address or resolve this debt. After the hearing, Applicant provided a Form 1099-C showing that the creditor had canceled this debt on June 30, 2023, in the approximate amount of \$10,282. (Answer; GE 9-10; AE G; Tr. 175-176)

SOR ¶ 4.c. This medical account was assigned to collection in about April 2022. In his Answer, he claimed that he had paid this debt; however, he has not provided documentary evidence to corroborate this claim. After the hearing, Applicant provided a text message or note, with no clear authorship or identifying information, claiming that this debt was paid; however, this evidence is insufficient to establish payments or resolution. **This debt is not resolved.** (Answer; GE 9; AE C)

SOR ¶ 4.d. This vehicle loan was incurred in about January 2015 and was charged off in March 2021 in the approximate amount of \$12,175. There is no evidence of any payments or payment arrangements to resolve this debt. **This debt is not resolved.** (Answer; GE 9; Tr. 177, 181)

SOR ¶¶ 4.e. and 4.f. The SOR alleged that Applicant failed to timely file his Federal and state income tax returns for tax years (TY) 2019, 2020, 2021, and 2022. At the hearing, Applicant provided inconsistent statements about which Federal and state income tax returns had been filed, indicating confusion and uncertainty on his part. After the hearing, he provided an Internal Revenue Service (IRS) account statement showing that he timely filed his TY 2019 Federal income tax (FIT) return and received a tax refund for that tax year.

In a post-hearing email, Applicant stated that a tax preparer and a family member were assisting him in filing the remaining untiled returns. He provided a text note, without any authorship or identifying information, stating that an unspecified return was ready for pickup at the tax preparer. There is no evidence that the FIT returns for TY 2020, 2021, and 2022 and the state income-tax (SIT) returns for TY 2019, 2020, 2021, and 2022 have been filed.

In his 2022 e-QIP, Applicant estimated that he owed approximately \$7,000 in FIT for TY 2020. At the hearing, he testified that he believed he owed FIT for multiple years because his income-tax withholding was insufficient. He explained that as of 2020, he no longer claimed his child as a dependent on his tax returns, but there is no evidence that he adjusted his income-tax withholding to account for this change. After preparing his TY 2020 FIT return, he calculated an outstanding \$7,000 tax liability and decided not to file his return. He had consulted a tax preparer prior to the hearing, but had not filed any returns, made any tax payments, or made any payment arrangements. There is no evidence of any payment arrangements with any Federal or state tax agency to resolve his delinquent taxes. (Answer; GE 1, 13; AE A-D; Tr. 146-165)

Applicant attributed his financial delinquencies to insufficient income. He estimated that he earned approximately \$45,000-50,000 plus sales commissions between 2017 and February 2024, while employed full time for a private company. His TY 2023 return listed \$68,000 in gross income, due in part to a \$7,000 withdrawal from a 401k account. Applicant has been unemployed since March 2024, because he and his wife relocated to a different state and he quit his employment. (Tr. 64-66, 162, 190-191)

After the hearing, Applicant provided a spreadsheet of his monthly expenses that did not reflect any payments on his delinquent accounts or delinquent taxes. This spreadsheet did not reflect any household income. Applicant has not participated in any credit counseling. (AE E; Tr. 185)

Whole Person

Applicant's facility security officer (FSO) testified on his behalf. He has known Applicant during the clearance process, but he has had limited interaction because Applicant has not begun his employment with the DOD contractor. The FSO testified that Applicant detailed his criminal behavior and drug involvement after the SOR issuance; however, the FSO could not recollect any information about those disclosures or the underlying allegations at the hearing. He testified that Applicant had matured and expressed remorse for his past misconduct. (Tr. 49-59)

Applicant's minister submitted a character-reference letter on Applicant's behalf. He praised Applicant's problem-solving skills and innovative approach, and he described Applicant as a devoted father and husband "who exemplifies integrity, compassion, and patience." (AE F)

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 sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive 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

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.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following is potentially applicable:

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

In July 2009, Applicant fondled a woman he knew to be heavily intoxicated. He was charged with felony sexual assault in the third degree and later pled guilty to misdemeanor assault in the second degree. AG ¶ 31 (b) applies.

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

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and

does not cast doubt on the individual's reliability, trustworthiness, or good judgment; 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.

In the last 15 years since the July 2009 incident, Applicant has engaged in criminal conduct on several occasions. Between 2007 and 2012, including while on probation, he illegally used marijuana on multiple occasions. Between 2018 and 2020, he illegally used marijuana on a monthly basis. Between 2020 and February 2022, he illegally used marijuana daily and illegally purchased marijuana weekly. In 2019, he was charged with and found culpable of driving on a suspended license, a misdemeanor. Applicant has acknowledged his criminal behavior regarding the 2009 incident and has expressed remorse; however, his illegal drug use persisted while on probation, after he had earned his bachelor's degree, after fatherhood, and while gainfully employed. Although it has been over two years since Applicant's last marijuana purchase and use, I must consider the entirety of the record of Applicant's criminal conduct spanning 2007 to February 2022. Doubts remain as to his judgment and ability to adhere to rules and laws. AG ¶¶ 32(a) and 32(d) do not apply. Applicant did not mitigate the criminal conduct security concerns.

Guideline H: Drug Involvement

The security concern for drug involvement 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. In this case, the following disqualifying conditions potentially apply:

(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.

Marijuana is a Schedule I controlled substance under Federal law pursuant to Title 21, Section 812 of the United States Code. Schedule I drugs are those which have a high potential for abuse; have no currently accepted medical use in treatment in the United States; and lack accepted safety for use of the drug under medical supervision. Section 844 under Title 21 of the United States Code makes it unlawful for any person to knowingly or intentionally possess a controlled substance not obtained pursuant to a valid prescription.

On October 25, 2014, the then Director of National Intelligence (DNI) issued guidance that changes to laws by some states and the District of Columbia to legalize or decriminalize the recreational use of marijuana do not alter existing federal law or the National Security Adjudicative Guidelines, and that an individual's disregard of federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security eligibility determinations.

On December 21, 2021, the DNI issued clarifying guidance concerning marijuana, noting that prior recreational use of marijuana by an individual may be relevant to security adjudications, but is not determinative in the whole-person evaluation. Relevant factors in mitigation include the frequency of use and whether the individual can demonstrate that future use is unlikely to recur.

Applicant admitted that he used marijuana occasionally between 2007 and 2012, used marijuana monthly between 2018 and 2020, and used marijuana daily between 2020 and February 2022. AG ¶ 25(a) applies.

Although Applicant was charged with misdemeanor possession of marijuana, he credibly testified that the discovered marijuana was not his. Notwithstanding Applicant's admitted illegal use, possession, and purchase of marijuana on other occasions, the Government did not establish AG ¶ 25(c) as to SOR ¶ 2.b.

Conditions that could mitigate the drug involvement security concerns are provided under AG ¶ 26. The following are potentially applicable:

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

(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:

(1) disassociation from drug-using associates and contacts;

(2) changing or avoiding the environment where drugs were used; and

(3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

Applicant illegally purchased and used marijuana on numerous occasions. This use persisted while he was on probation, after he earned a bachelor's degree, while gainfully employed, and after becoming a father. Nevertheless, he has not used marijuana since February 2022 and stated his intent to abstain from all drug involvement in the future in his 2022 e-QIP. No one in his current household is associated with or uses illegal drugs. AG ¶¶ 26(a) and 26(b) apply. Applicant mitigated the drug involvement security concerns.

Guideline E: Personal Conduct

The concern under this guideline is set out in AG ¶ 15:

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

The guideline notes several conditions that could raise security concerns under AG ¶ 16. The following disqualifying conditions are potentially applicable in this case:

(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 national security eligibility or trustworthiness, or award fiduciary responsibilities; and

(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.

Applicant denied deliberately falsifying his responses on Section 22 of his August 2022 e-QIP (SOR ¶ 3.a.) and during his September 2022 security interview (SOR ¶ 3.b.). Applicant admitted the 2009 misdemeanor conviction and 2013 drug charge on his 2014 e-QIP. Applicant's hearing testimony repeatedly conflated and erred as to the distinction between the terms "charge " and "conviction." He testified that this confusion led to his omission on the 2022 e-QIP and during the 2022 interview. Applicant also testified that he had forgotten the dismissed drug charge. Notwithstanding the impact and memory of the 2009 incident, Applicant's confusion over the terms in the e-QIP queries was notable at hearing. The record evidence did not establish that Applicant deliberately falsified

information in his 2022 e-QIP or during his 2022 interview. AG ¶¶ 16(a) and 16(b) do not apply. The Government did not establish the alleged personal conduct security concerns.

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's four delinquent accounts total approximately \$27,035, and they became delinquent between about August 2016 and April 2022. AG ¶¶ 19(a) and 19(c) apply. Applicant failed to timely file his FIT returns for TY 2020, 2021, and 2022 and his SIT returns for TY 2019, 2020, 2021, and 2022. AG ¶ 19(f) applies.

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

- (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 has 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.

Applicant bears the burdens of production and persuasion in mitigation. An applicant is not held to a standard of perfection in his debt-resolution efforts or required to be debt-free. "Rather, all that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan." ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017). See, e.g., ISCR Case No. 13-00987 at 3, n. 5 (App. Bd. Aug. 14, 2014).

Applicant attributed his financial delinquencies to underemployment, i.e., lower income; however, he did not provide sufficient evidence to establish that he has acted responsibly to address and resolve his delinquent debts. He was gainfully employed between 2017 and February 2024, yet he did not make payments or payment arrangements on the four delinquent accounts. Moreover, as of the close of the record, he had not filed any of the seven missing FIT and SIT returns noted above. There is no evidence that he has made arrangements with the appropriate tax authorities to resolve his delinquent taxes. While Applicant is currently unemployed, there is no evidence that he took steps to address and resolve his delinquent debts, untiled tax returns, and delinquent taxes while he was gainfully employed for several years. Applicant did not mitigate the financial considerations security concerns.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of trust 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, E, F, and the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant has expressed remorse for his past criminal behavior, and his pastor praised him as a devoted father and husband "who exemplifies integrity, compassion, and patience." Notwithstanding this favorable evidence, Applicant has not overcome the concerns about his criminal conduct, delinquent debts, and untiled tax returns. His inaction raises concerns as to his judgment and reliability. He did not mitigate the criminal conduct and financial considerations 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:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraphs 2.a.-2.b.:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraphs 3.a.-3.b.:	For Applicant
Paragraph 4, Guideline F:	AGAINST APPLICANT
Subparagraphs 4.a.-4.f.:	Against Applicant

Conclusion

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

Eric H. Borgstrom
Administrative Judge