



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



In the matter of:

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ISCR Case No. 25-00726

Applicant for Security Clearance

Appearances

For Government: Brian L. Farrell, Esq., Department Counsel

For Applicant: *Pro se*

04/01/2026

Decision

HARVEY, Mark, Administrative Judge:

Guideline J (criminal conduct) security concerns are mitigated; however, Guidelines F (financial considerations) and H (drug involvement and substance misuse) security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On March 18, 2024, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) or security clearance application (SCA). (Government Exhibit (GE) 1) On July 22, 2025, the Defense Counterintelligence and Security Agency (DCSA) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and Security Executive Agent Directive 4, establishing in Appendix A, the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE)

1)

The SOR detailed reasons why DCSA did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and said his case will be submitted to an Administrative Judge for a determination as to whether to grant, deny, or revoke his security clearance. Specifically, the SOR set forth security concerns arising under Guidelines F, J, and E. (HE 1) On August 12, 2025, Applicant responded to the SOR. (HE 2) On September 18, 2025, Department Counsel was ready to proceed. This decision was delayed when all administrative judges were furloughed from October 1 through November 12, 2025, during a federal government shutdown due to a lapse in federal funding. On January 8, 2026, the case was assigned to me. On January 14, 2026, DOHA issued a notice scheduling the hearing for March 13, 2026. (HE 3) The hearing was held as scheduled, using the Microsoft Teams video teleconference system.

During the hearing, Department Counsel offered 10 exhibits; Applicant offered one exhibit; and all proffered exhibits were admitted into evidence without objection. (Tr. 9-10, 15-20; GE 1-GE 10; Applicant Exhibit (AE) A (10 pages))

On March 27, 2026, DOHA received a copy of the transcript. The record was not held open after Applicant's hearing. (Tr. 95)

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript.

Findings of Fact

In Applicant's SOR response, he admitted the allegations in SOR ¶¶ 1.a, 1.b, 1.c, 2.a, and 3.a through 3.h. (HE 2) He also provided extenuating and mitigating information. (HE 2) His admissions are accepted as findings of fact. (HE 2)

Applicant is a 41-year-old welder tradesman employed by a Department of War (DoW) contractor since November of 2023. (Tr. 6, 8) In 2003, he graduated from high school. (Tr. 6) He needs about 14 more college classes to receive a degree. (Tr. 30) He is currently attending college to earn an associate degree for a maritime trade certification. (Tr. 7, 29) He has never married, and his two children are ages 9 and 16. (Tr. 8) His 9-year-old child lives with him, and he pays \$160 monthly in child support for his 16-year-old child. (Tr. 8)

Financial Considerations

SOR ¶ 1.a alleges, and Applicant admitted, that he failed to file his federal income tax (FIT) returns for tax years (TYs) 2022 and 2023. (Tr. 52-53) In his first response to DOHA interrogatories, he admitted he had not filed his FIT for TYs 2022 and 2023, and he said that he "thought he could strategically file" his tax returns every other year. (GE 2 at 7) He is seeking help to file his FIT returns for TYs 2022 and 2023. (Tr. 43, 59) He unsuccessfully tried to obtain assistance from the IRS, and he unsuccessfully attempted to use TurboTax to file his FIT returns for TYs 2022 and 2023. (Tr. 49-51) Applicant described his tax filing as follows:

I feel like I could have -- I could have skipped a few years. My honest opinion, I felt like I could skip a few years until I find me a really steady job and then they could intercept it because that's what -- that's how I ended up paying taxes before. They intercepted a nice sum of money, and it was all good. That's from my personal actions. (Tr. 47-48)

SOR ¶ 1.b alleges, and Applicant admitted, that he failed to file his state income tax (SIT) returns for the TYs 2022 and 2023. (Tr. 52-53; HE 2; GE 2 at 9) In his first response to DOHA interrogatories, he said he thought he could file his tax returns every other year. (GE 2 at 9)

SOR ¶ 1.c alleges, and Applicant admitted, that he is indebted to the federal government for FIT for TY 2021 for about \$984. (GE 2 at 8; HE 2) He believed he might have a FIT refund for TY 2025, and the IRS can intercept it and apply it to his tax debt. (Tr. 51-52) A May 12, 2025 IRS notice states his \$498 overpayment for TY 2024 was applied as follows: \$42 for TY 2020; and \$456 applied to TY 2021, resulting in a \$984 tax debt for TY 2021. (GE 2 at 30; AE A)

Applicant's current child-support arrearage for his 16-year-old son is about \$5,000. (Tr. 8, 32) His child support has been in arrears for about 10 years. (Tr. 33) His child support is being paid from his paycheck through garnishment. (Tr. 32, 40-41)

Drug Involvement and Substance Misuse

SOR ¶ 2.a alleges, and Applicant admits, that from about June of 2002 to about February of 2024, he used marijuana with varying frequency. (HE 2) He denied that he used marijuana after February of 2024. (Tr. 60) He stopped using marijuana three or four weeks before a preemployment urinalysis drug test. (Tr. 61) He stopped using marijuana to enable him to obtain and retain his current employment. (Tr. 61)

Applicant was aware that possession of marijuana was illegal at the federal and state levels. (Tr. 62) He used marijuana about five times a week from 2002 to 2024. (Tr. 62) He never had a medical-marijuana prescription. (Tr. 65) From 2020 to 2024, he purchased about an ounce of marijuana about three times a month. (Tr. 65) He continued possessing and using marijuana after his two marijuana-related convictions in SOR ¶¶ 3.b and 3.c, discussed *infra*. (Tr. 67) He does not intend to use marijuana in the future. (Tr. 65)

Criminal Conduct

SOR ¶ 3.a alleges, and Applicant admitted, that in about February 2018, he was arrested and charged with driving while intoxicated (DWI), reckless driving, and driving on a suspended license. (HE 2) He was found guilty and sentenced to 180 days in jail (170 days suspended), and to pay fines and costs. His driver's license was suspended for six months. (HE 2)

Applicant was driving a car his friend rented. (Tr. 77) A police officer said Applicant was driving 125 miles per hour (MPH) at 1:00 or 2:00 a.m. (Tr. 75; GE 2 at 13) Applicant said he was speeding after consuming a few beers, and he believed he was driving about 80 or 90 MPH. (Tr. 72, 75-77) The police stopped Applicant's vehicle, and he refused a breathalyzer test. (Tr. 72-73) He could not remember how much he had to drink. (Tr. 72) He was supposed to serve his sentence to jail on weekends, and he reported late to jail on one occasion. (Tr. 68) He was told to, but did not comply, with the direction to turn himself in to the jail. (Tr. 68-69) He did not serve the remainder of his jail sentence until he was arrested in 2021. (Tr. 68-70) He does not drink and drive, and he does not believe that he will have a DWI in the future. (Tr. 70)

SOR ¶ 3.b alleges, and Applicant admitted, that in about April 2014, he was arrested and charged with possession of marijuana. (HE 2) He was found guilty and sentenced to 30 days in jail (10 days suspended). (HE 2)

SOR ¶ 3.c alleges, and Applicant admitted, that in about September 2013, he was arrested and charged with possession of marijuana. (HE 2) He was found guilty and sentenced to 30 days in jail (all suspended). (HE 2) Applicant said he was selling marijuana for "maybe the whole" of 2013. (Tr. 80)

SOR ¶ 3.d alleges, and Applicant admitted, that in January 2011, he was found guilty of possession of cocaine with the intent to distribute, and he was sentenced to five years in jail (four years and four months suspended) and five years of probation. (HE 2) He said he was selling cocaine for about six months. (Tr. 78-79) The terms of his probation are not part of the record.

SOR ¶ 3.e alleges, and Applicant admitted, that in about November 2008, he was charged with failure to appear on a misdemeanor charge. He was found guilty and sentenced to six months in jail (five months suspended). (HE 2)

SOR ¶ 3.f alleges, and Applicant admitted, that in about July 2006, he was arrested and charged with eluding police, threatening bodily harm, trespassing, resisting arrest, and obstructing justice. (HE 2) He pleaded guilty to resisting arrest, obstructing justice, and eluding police. The court sentenced him to 12 months in jail (11 months and 25 days suspended) and unsupervised probation. (HE 2) He said he ran from the police because he was in a gang neighborhood, and he did not want to be arrested. (Tr. 81-82)

SOR ¶ 3.g alleges, and Applicant admitted, that in about February 2003, he was arrested and charged with felony malicious wounding by mob. (HE 2) He pleaded guilty to misdemeanor assault and battery, and the court sentenced him to 12 months in jail (all suspended). (HE 2) He said a police officer approached him and his friends at a basketball court. (Tr. 83) His friend struck the police officer, and Applicant was charged. (Tr. 83) Applicant denied that he assaulted the police officer. (Tr. 83) He said he was involved because he was trying to break up the fight between his friend and the police officer. (Tr. 84) Applicant pleaded guilty to assaulting the officer because he was worried about the possible sentence he could receive if he was convicted of felony malicious wounding, and he preferred to plead guilty to the lesser offense of assault and battery. (Tr. 83)

SOR ¶ 3.h alleges, and Applicant admitted, that in about December 2002, he was arrested and charged with felony grand larceny. (HE 2) He pleaded guilty to the misdemeanor charge of unauthorized use of a vehicle, and the court sentenced him to 12 months in jail (all suspended) and two years of unsupervised probation. (HE 2) He said he was a passenger in a vehicle that he knew was stolen; however, he did not steal it. (Tr. 85-86) Everyone in the vehicle when the police stopped it was arrested. (Tr. 86)

Applicant attended therapy for four months in 2024. (Tr. 88) He said therapy helped him tremendously. (Tr. 88) In his concluding statement, Applicant said:

I just want to thank you for allowing me the opportunity to present my little testimony today. I recognize everything is very serious, everything that we discuss in the SOR is very serious, and I take responsibility for every -- all my actions in the past.

I'm just going about the steps of trying to get all my tax situations going on and, if you could -- if you can see through the actions that I addressed and my testimony, I'm very committed into making the most responsible decisions getting my finances accountable -- accountability up and just maintain a high standard of trust.

Because I'm going to be -- have -- with this clearance, I'm going to have access to sensitive information, and I take pride in doing my job and I love to serve this position, you know, that supports national security. And I just hope that you can take everything I said into consideration, and we can move forward.

And I just thank you for your time and consideration. (Tr. 90-91)

Character Evidence

Applicant's manager at his current employment said:

[Applicant] has been employed with [his current employer] since March 25, 2024. He is enrolled in our Apprentice Program and working towards his journeyman welder certificate. He has accumulated over 4000 hours or the 8000 hours required [to date]. As part of the Apprentice Program, he has been taking courses at the local [Community College]. His performance has maintained him on the list of Honor Roll students.

[Applicant's] work ethic is highly respected by his supervisors and managers. He is often requested on projects where work requires fine attention to detail and strict adherence to requirements. He conducts assigned work efficiently, correctly and in accordance with all specifications and requirements without question. Due to the nature of work performed by both [his employer] and [Applicant], integrity is of the utmost importance.

[He] has never demonstrated any instances where his integrity has been brought into question. (AE A)

Applicant's facility security officer (FSO) has known Applicant since August of 2024. (Tr. 24) She described Applicant as diligent and conscientious. (Tr. 23-24) He has a good reputation in the workplace. She said he is a perfect candidate for a security clearance. (Tr. 27) Applicant's supervisor described him as having a positive attitude and being diligent and responsible. (Tr. 36-39) He seeks self-improvement and opportunities to demonstrate leadership. (Tr. 37-38) The character evidence supports his access to classified information. (Tr. 38)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of War or his designee to grant applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. Thus, nothing in an unfavorable decision should be construed to suggest that it is based on any express or implied determination about an applicant's allegiance, loyalty, or patriotism. An unfavorable decision is merely an indication the applicant has not met the strict guidelines the President, Secretary of War, and Director of National Intelligence have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “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). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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 Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant’s financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant’s self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a

nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 includes disqualifying conditions that could raise a security concern and may be disqualifying 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.

The record establishes the disqualifying conditions in AG ¶¶ 19(a), 19(c), and 19(f), requiring additional inquiry about the possible applicability of mitigating conditions. Discussion of the disqualifying condition is contained in the mitigation section, *infra*. The financial considerations mitigating conditions under AG ¶ 20, which may be applicable in this case are as follows:

- (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.

The Appeal Board in ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013) explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

Applicant failed to file as required, FIT and SIT returns for TYs 2022 and 2023. He owes a FIT debt for TY 2021 of about \$984. He has a non-SOR child-support arrearage of about \$5,000. His child-support debt is being addressed by a garnishment of his pay. He has had a child-support arrearage for about 10 years.

AG ¶ 20(a) does not apply to the SOR allegations. "It is also well established that an applicant's ongoing, unpaid debts [and unfiled tax returns] demonstrate a continuing course of conduct and can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 22-02226 at 2 (App. Bd. Oct. 27, 2023) (citing ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017)). AG ¶ 20(b) does not apply because Applicant did not assert any circumstances partially or fully beyond his control, which adversely affected his finances or caused him not to file his FIT and SIT returns for TYs 2022 and 2023.

A willful failure to timely make (means complete and file with the IRS) a FIT return is a misdemeanor-level federal criminal offense. Title 26 U.S.C. § 7203, willful failure to file return or supply information, reads:

Any person . . . required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to . . . make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor. . . .

A willful failure to make return, keep records, or supply information when required, is a misdemeanor offense without regard to the existence of any tax liability. *Spies v. United States*, 317 U.S. 492 (1943); *United States v. Walker*, 479 F.2d 407 (9th Cir. 1973); *United States v. McCabe*, 416 F.2d 957 (7th Cir. 1969); *O'Brien v. United States*, 51 F.2d 193 (7th Cir. 1931). For purposes of this decision, I am not considering Applicant's failure to timely file his FIT returns against him as a crime. In regard to the failure to timely file his FIT returns, the Appeal Board has commented:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a clearance adjudication is not directed at collecting debts. See, e.g., ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, neither is it directed toward *inducing an applicant to file tax returns*. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. *Id.* A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).

ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016) (emphasis in original). See ISCR Case No. 15-01031 at 4 (App. Bd. June 15, 2016) (citations omitted); ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016) (citing ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002)); ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015).

The Appeal Board in ISCR Case No. 15-01031 (App. Bd. June 15, 2016) explained that in some situations, even if no taxes are owed when tax returns are not timely filed, grant of access to classified information is inappropriate. In ISCR Case No. 15-1031 (App. Bd. June 15, 2016), the applicant filed his 2011 FIT return in December 2013, his 2012 FIT return in September 2014, and his 2013 FIT return in October 2015. He received FIT refunds of at least \$1,000 for each year. Nevertheless, the Appeal Board reversed the administrative judge's decision to grant access to classified information.

The Appeal Board clarified that even in instances where an “[a]pplicant has purportedly corrected [his or her] federal tax problem, and the fact that [applicant] is now motivated to prevent such problems in the future, does not preclude careful consideration of [a]pplicant’s security worthiness in light of [his or her] longstanding prior behavior evidencing irresponsibility” including a failure to timely file FIT returns. See ISCR Case No. 15-01031 at 3 & n.3 (App. Bd. June 15, 2016) (characterizing “no harm, no foul” approach to an applicant’s course of conduct and employing an “all’s well that ends well” analysis as inadequate to support approval of access to classified information with focus on timing of filing of tax returns after receipt of the SOR).

In this instance, Applicant failed to file, as required, FIT and SIT returns for TYs 2022 and 2023. He owes a FIT debt for TY 2021 of about \$984. He has a non-SOR alleged child-support arrearage of about \$5,000. The non-SOR allegation will not be considered for disqualification purposes; however, it will be considered in the mitigation assessment and under the whole-person concept.

At the time the record closed, Applicant had not filed his overdue tax returns, and he did not have an installment agreement with the IRS. AG ¶ 20(g) is not applicable. His overall handling of his taxes leaves lingering security concerns. See ISCR Case No. 24-

02104 at 2 (App. Bd. Jan. 26, 2026) (affirming denial of security clearance and noting despite some mitigation under AG ¶ 20(g) that the evidence did not support mitigation).

In ISCR Case No. 06-10320 at 2 (App. Bd. Nov. 7, 2007), the Appeal Board said:

The application of disqualifying and mitigating conditions and whole-person factors does not turn simply on a finding that one or more of them apply to the particular facts of a case. See, e.g., ISCR Case No. 01-14740 at 7 (App. Bd. Jan. 15, 2003). Thus, the presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. As the trier of fact, the Judge must weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or vice versa.

Applicant did not prove that he was unable to make greater progress sooner in the filing of his overdue tax returns, establishing an IRS installment payment plan, or paying his delinquent FIT debt. Under all the circumstances, and considering the evidence “as a whole,” Applicant’s failures regarding his FITs and SITs are not mitigated.

Criminal Conduct

AG ¶ 30 provides the security concern arising from criminal conduct stating, “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 lists conditions that could raise a criminal conduct security concern and may be disqualifying in this case:

(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; and

(d) violation or revocation of parole or probation, or failure to complete a court-mandated rehabilitation program.

AG ¶¶ 31(a), 31(b), and 31(d) are established. Discussion of the disqualifying conditions is in the mitigation section, *infra*. AG ¶ 32 lists conditions that could mitigate criminal conduct security concerns:

(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;

(b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(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.

In about February 2018, Applicant was charged with and subsequently convicted of DWI, reckless driving, and driving on a suspended license. He was sentenced to 180 days in jail (170 days suspended), to pay fines and costs, and his driver's license was suspended for six months. He did not serve his complete jail sentence in 2018, and he was arrested in 2021 to complete his remaining time in jail. Currently, he does not drink and drive, and he does not believe that he will have a DWI in the future.

In about April 2014, Applicant was charged with and subsequently convicted of possession of marijuana. He was sentenced to 30 days in jail (10 days suspended). In about September 2013, he was charged with and convicted of possession of marijuana. He was sentenced to 30 days in jail (all suspended). Applicant said he was selling marijuana for "maybe the whole" of 2013.

In January 2011, Applicant was found guilty of possession of cocaine with the intent to distribute, and he was sentenced to five years in jail (four years and four months suspended), and five years of probation. He said he was selling cocaine for about six months. His two possession of marijuana convictions occurred while he was on probation for the 2011 offense. In about November 2008, he was charged with and convicted of failure to appear on a misdemeanor charge. He was sentenced to six months in jail (five months suspended).

In about July 2006, Applicant was charged with and convicted of eluding police, resisting arrest, and obstructing justice. The court sentenced him to 12 months in jail (11 months and 25 days suspended) and unsupervised probation. In about February 2003, he was charged with felony malicious wounding by mob. He pleaded guilty to misdemeanor assault and battery, and the court sentenced him to 12 months in jail (all suspended). In about December 2002, he was charged with felony grand larceny. He pleaded guilty to the misdemeanor charge of unauthorized use, and the court sentenced him to 12 months in jail (all suspended) and two years of unsupervised probation.

The SOR does not allege selling cocaine for about six months and marijuana for about one year. It does not allege under Guideline J that he possessed marijuana on

hundreds of occasions. These non-SOR allegations will not be considered for disqualification purposes; however, they will be considered in the mitigation assessment and under the whole-person concept.

The most recent criminal conduct alleged in the SOR is Applicant's failure to complete his sentence to jail until 2021 for his offenses in 2018. His FSO and supervisor positively described his work performance. Applicant has clearly matured and is making more responsible decisions now than he did from 2002 to 2018. AG ¶¶ 32(a) and 32(d) apply. His SOR-alleged criminal conduct is not recent and happened under "such unusual circumstances, that it is unlikely to recur and does not cast doubt on [his] reliability, trustworthiness, or good judgment." There is evidence of his successful rehabilitation relating to the criminal conduct guideline. Based on Applicant's statements at his hearing and other security records, criminal conduct security concerns are mitigated.

Drug Involvement and Substance Misuse

AG ¶ 24 provides the security concern arising from drug involvement and substance misuse stating:

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.

AG ¶ 25 provides conditions that could raise a drug involvement and substance misuse security concern and may be disqualifying in this case: "(a) any substance misuse (see above definition)"; and "(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia."

AG ¶¶ 25(a) and 25(c) are established. Discussion of the disqualifying conditions is in the mitigation section, *infra*. AG ¶ 26 lists conditions that could mitigate drug involvement and substance misuse security concerns:

(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;
- (c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and
- (d) satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Applicant admitted that he possessed and used marijuana from about 2002 to February 2024. He used marijuana about five times a week over more than 20 years. He said he stopped using marijuana in February 2024, and he does not intend to use marijuana in the future.

Marijuana is currently listed on Schedule I of the Controlled Substances Act. See 21 U.S.C. § 812(c); Drug Enforcement Administration (DEA) listing at <https://www.dea.gov/drug-information/drug-scheduling> (information link on bottom of web page). His marijuana possession violates federal and state criminal laws, and he has convictions for possession of marijuana under state law in 2013 and 2014.

Drugs listed as Schedule I Controlled Substances, have “no ‘currently accepted medical use in treatment.’ 21 U.S.C. § 812(a)(1)(B).” ISCR Case No. 24-01307 at 3 (App. Bd. July 17, 2025). See DEA website, *supra*; Executive Order, *Increasing Medical Marijuana and Cannabidiol Research* (December 18, 2025). The scheduling of marijuana is under DEA review, and it may be downgraded from Schedule I to Schedule III, which would permit marijuana possession and use based on prescriptions. *Id.*

The Appeal Board provided a detailed discussion of the mitigating conditions pertaining to marijuana possessions and use:

In recognition of the changing landscape of marijuana law and in consideration of the Director of National Intelligence’s Clarifying Guidance Concerning Marijuana, the Board has noted that significant factual and legal differences may exist between an applicant’s state-compliant marijuana use and use of other illegal drugs, holding that such differences are an important aspect of the case that a reasonable person would expect to be addressed. See ISCR Case No. 22-02132 at 3 (App. Bd. Oct. 27, 2023). In initial eligibility determinations, if the record reflects such differences, the judge must articulate a rational basis for why, after consideration of those

differences and the Clarifying Guidance, the conduct continues to cast doubt on the individual's current reliability, trustworthiness, and good judgment.

ISCR Case No. 23-02402 at 4 (App. Bd. Feb. 19, 2025) (internal footnotes omitted).

The Security Executive Agent (SecEA) promulgated clarifying guidance concerning marijuana-related issues in security clearance adjudications the Appeal Board cited states as follows:

[Federal] agencies are instructed that prior recreational marijuana use by an individual may be relevant to adjudications but not determinative. The SecEA has provided direction in [the adjudicative guidelines] to agencies that requires them to use a "whole-person concept." This requires adjudicators to carefully weigh a few variables in an individual's life to determine whether that individual's behavior raises a security concern, if at all, and whether that concern has been mitigated such that the individual may now receive a favorable adjudicative determination. Relevant mitigations include, but are not limited to, frequency of use and whether the individual can demonstrate that future use is unlikely to recur, including by signing an attestation or other such appropriate mitigation. Additionally, in light of the long-standing federal law and policy prohibiting illegal drug use while occupying a sensitive position or holding a security clearance, agencies are encouraged to advise prospective national security workforce employees that they should refrain from any future marijuana use upon initiation of the national security vetting process, which commences once the individual signs the certification contained in the Standard Form 86 (SF-86), Questionnaire for National Security Positions.

SecEA Guidance at 2 (quoted in ISCR Case No. 20-02974 at 3-4 (App. Bd. Feb. 1, 2022)).

The DOHA Appeal Board has cited the importance of consideration of "the changing landscape of marijuana law and . . . of the Director of National Intelligence's *Clarifying Guidance Concerning Marijuana*." ISCR Case No. 23-02402 at 4 (App. Bd. Feb. 19, 2025). See *also* ISCR Case No. 24-00914 at 3 (App. Bd. Apr. 9, 2025) (noting the "revolving landscape of marijuana law and policy," "the resulting increasing prevalence of marijuana use," and in some instances "recreational marijuana use deserves less, or even no negative inference on judgment.").

The Appeal Board has "never established a 'bright line' rule as to recency of drug use. The extent to which security concerns may have become attenuated through the passage of time is a question that must be resolved based on the evidence as a whole." See ISCR Case No. 14-01847 at 3 (App. Bd. Apr. 9, 2015). See *also* ISCR Case No. 24-01307 at 5 (App. Bd. July 17, 2025) (stating same).

Applicant's possessions and distributions of marijuana and cocaine discussed under Guideline J are not alleged in the SOR under Guideline H. These non-SOR

allegations will not be considered for disqualification purposes; however, they will be considered in the mitigation assessment under Guideline H and under the whole-person concept.

Applicant frequently used marijuana, and his most recent marijuana use was in February 2024. “The [DOHA Appeal] Board has ‘long held that applicants who use marijuana [or other illegal drugs] after having been placed on notice of the security significance of such conduct may be lacking in the judgment and reliability expected of those with access to classified information.’” ISCR Case No. 24-01001 (App. Bd. Apr. 22, 2025) (quoting ISCR Case No. 20-01772 at 3 (App. Bd. Sept. 14, 2021)). See *also* ISCR Case No. 24-00468 at 6 n.7 (App. Bd. Apr. 16, 2025). Applicant stopped using marijuana before completion of his SCA, his DCSA background interview, and receipt of the SOR. He has not used marijuana after being placed on notice of the security implications of using marijuana.

None of the mitigating conditions fully apply to all of the disqualifying conduct under Guideline H because Applicant has not established a sufficient period of abstinence from marijuana possession and use. He continued his marijuana involvement after two marijuana-related convictions under state law. His decisions to possess and use marijuana may indicate he lacks the qualities expected of those with access to national secrets and continue to cast doubt on his current reliability, trustworthiness, and judgment. Drug involvement and substance misuse security concerns are not mitigated.

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), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall commonsense judgment based upon careful consideration of the guidelines” and the whole-person concept. My comments under Guidelines F, H, and J are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is a 41-year-old welder tradesman employed by a DoW contractor since November of 2023. In 2003, he graduated from high school. He needs about 14 more

college classes to receive a degree. He is currently attending college to earn an associate degree for a maritime trade certification.

Applicant's FSO and supervisor lauded Applicant's work performance. The general sense of their statements is that Applicant is diligent, conscientious, and responsible. He has a good reputation in the workplace. He seeks self-improvement and opportunities to demonstrate leadership. Their statements supported his access to classified information.

The evidence supporting denial of Applicant's security clearance is detailed in the financial considerations and drug involvement and substance misuse analysis sections, *supra*, and this evidence is more substantial than the evidence of mitigation.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. *See Dorfmont*, 913 F. 2d at 1401. "[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant's eligibility for access to classified information." ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No.12-00270 at 3 (App. Bd. Jan. 17, 2014)).

I have carefully applied the law, as set forth in *Egan*, *Dorfmont*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Applicant mitigated criminal conduct security concerns; however, financial considerations, drug involvement and substance misuse security concerns are not mitigated.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With continued effort to refrain from abuse of illegal substances and establishment of his financial responsibility with regard to his FIT, SIT, and child support, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

Formal Findings

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: Subparagraphs 1.a, 1.b, and 1.c:	AGAINST APPLICANT Against Applicant
Paragraph 2, Guideline H: Subparagraph 2.a:	AGAINST APPLICANT Against Applicant
Paragraph 3, Guideline J: Subparagraphs 3.a through 3.h:	FOR APPLICANT For Applicant

Conclusion

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

Mark Harvey
Administrative Judge