DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 25-00996
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Tovah A. Minster, Esq., Department Counsel
For Applicant: *Pro se*

06/24/2026

Decision

BORGSTROM, Eric H., Administrative Judge:

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

Statement of the Case

On September 19, 2025, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E (personal conduct), Guideline H (drug involvement and substance misuse), and Guideline F (financial considerations). The DCSA 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 (AG) implemented on June 8, 2017.

In Applicant's September 24, 2025 response to the SOR (Answer), he admitted SOR ¶¶ 1.a. and 2.a., and he denied SOR ¶¶ 1.b., 1.c., 1.d., and 3.a. He provided additional information and explanations in response to the allegations. He did not attach any documentary evidence. He requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. (Answer)

On November 19, 2025, the Government was ready to proceed to a hearing. I was assigned this case on January 16, 2026. On January 30, 2026, DOHA issued a notice scheduling the hearing for March 5, 2026. The hearing proceeded as scheduled. The Government proffered two evidentiary exhibits, which I admitted as Government Exhibits (GE) 1 and 2, without objection. Applicant testified and did not submit any documentary evidence. I held the record open until April 6, 2026, to provide the parties an opportunity to respond to the amended SOR allegation discussed below and to supplement the evidentiary record. DOHA received the hearing transcript (Tr.) on March 12, 2026. On March 30, 2026, I received five attachments and an email from Applicant, which I admitted as Applicant Exhibits (AE) A through F, respectively, without objection. The record closed on April 6, 2026, upon the Government's review of Applicant's post-hearing submissions.

Amendment to the SOR

During the hearing, *sua sponte*, I amended the SOR, pursuant to Paragraph 17 of the Additional Procedural Guidance of the Directive, to add the following allegation under Guideline E (SOR ¶ 1):

> e. Your supervisors and your family members are unaware of your conduct referenced in SOR ¶ 1.a., above.

Neither party objected to the amendment. As noted above, the record remained open until April 6, 2026, to provide the parties an opportunity to submit additional evidence and argument in response to the amended allegation. Applicant's post-hearing submissions, admitted into evidence, directly responded to the amended allegation. (Tr. 73-75)

Findings of Fact

Applicant is 66 years old. He graduated from high school in 1978. From 1978 to 1981, he attended college, but he did not complete a degree. He was previously married from June 1991 to April 2015. He has been married to his second wife since May 2017. He has three children, ages 33, 31, and 24, and one stepchild, age 38. Since October 2012, he has been employed full time as the principal architect for a federal contractor. This is his first application for access to classified information. (GE 1-2; Tr. 25-27, 32)

In about 2004, Applicant was invited to join a project with an "open source organization" (O). O and the project provided a coordination point across public and private sectors to address and resolve cybersecurity issues, bugs, vulnerabilities, etc. Applicant's participation was voluntary and unpaid, though he joined and supported O at the behest of his then employer, which benefited from O's activities. His involvement started in the software-coding realm. He retained his full-time employment throughout his participation with O.

Critical discrepancies and inconsistencies exist regarding the timeline of Applicant's admitted embezzlement, its discovery, and his restitution. According to his security clearance application (e-QIP) (GE 1), in October 2012, Applicant began working with his current employer (E), which supported Applicant's continued involvement with O. According to Applicant, he volunteered for the treasurer role within O in 2013 or 2014. He received signature authority for checks and bank accounts for O, a registered corporation, and he had a fiduciary duty or responsibility to generate monthly financial reports or spreadsheets to distribute to the principals at O. He testified that he served as treasurer for approximately 12 to 18 months. In 2014, O received a federal income tax refund in the approximate amount of $50,000. These funds were received as a check issued by the U.S. Department of Treasury, and Applicant deposited these funds in O's bank account. (Answer; Tr. 19-22, 49-50, 58-60, 71)

While serving as the treasurer for O, Applicant's mortgage account became approximately 90 to 120 days past due. Shortly after he deposited the $50,000 federal income tax refund, he drafted a $35,000 check to himself from O's checking account, without the knowledge or authorization of any principals at O. He deposited the funds in his personal account to resolve the mortgage delinquency. Within a few weeks, he resigned his position as treasurer due to a disagreement with another member of the organization. A new treasurer was appointed, and that individual identified the "discrepancy" in O's check register. Upon confrontation by the new treasurer, Applicant admitted his embezzlement of the funds. Shortly thereafter, Applicant separated completely from participation in O, in lieu of being involuntarily removed. He agreed to pay approximately $68,000 in restitution and legal fees, and repayment was completed. As discussed below, Applicant's testimony about the timeline of events does not align with the record evidence. (Answer; Tr. 58-60, 67-68)

On June 22, 2023, Applicant certified and submitted an e-QIP. He did not disclose his participation with O, his embezzlement, or his forced resignation from O under Sections 13A and 13C. He did not report his marijuana use under Section 23. These queries, in pertinent part, read:

> **Section 13A – Employment Activities**
>
> List all of your employment activities, including unemployment and self-employment, beginning with the present and working back 10 years. The entire period must be accounted for without breaks. If the employment activity was military duty, list separate employment activity periods to show each change of military duty station.
>
> **Section 13C – Employment Record**
>
> Have any of the following happened to you in the last seven (7) years at employment activities that you have not previously listed?
>
> > Fired from a job?
> > Quit a job after being told you would be fired?
> > Have you left a job by mutual agreement following charges or allegations of misconduct?

> Left a job by mutual agreement following notice of unsatisfactory performance?
> Received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as violation of security policy?

Section 23 – Illegal Use of Drugs or Drug Activity

> In the last seven (7) years, have you illegally used any drugs or controlled substances? Use of a drug or controlled substance includes injecting, snorting, inhaling, swallowing, experimenting with or otherwise consuming any drug or controlled substance. (GE 1)

On September 20, 2023, Applicant was interviewed by an authorized investigator on behalf of the Office of Personnel Management (OPM). During the interview, Applicant discussed his foreign travel in September 2017 and November 2018 as a representative of O and tied to his current employment with E. E paid for Applicant's travel. He did not list his foreign travel on two occasions on his e-QIP, because he interpreted those trips as business trips on behalf of E. (GE 2 at 12)

During his September 2023 OPM interview, Applicant admitted that he had used marijuana approximately once every month to two months from 2020 to the present. Applicant or his spouse typically purchased marijuana edibles from a state-licensed dispensary to use as a sleep aid. Prior to the OPM interview, he had been unaware that federal drug laws prohibited marijuana use and superseded state laws legalizing marijuana use. He had also been unaware that DOD regulations prohibited federal contractors from using marijuana. (GE 2 at 12)

During his OPM interview, Applicant disclosed that his mortgage had been approximately three or four months past due in 2014 because of his marital separation. He then admitted that, while volunteering at O, he served as the bookkeeper and had access to O's financial accounts. He redirected a $50,000 federal income tax refund for O to his own account to resolve his mortgage delinquency. He quit O several months later "due to a combination of politics and the theft of the money." A new bookkeeper took over the duties and discovered Applicant's theft. O agreed not to press criminal charges if Applicant repaid the embezzled funds. Applicant agreed to a confidential settlement to repay the stolen funds within 15 months, and he completed payments in 2016. As of the interview, Applicant's employer and family were unaware of his theft. (GE 2 at 12-13)

On September 3, 2024, Applicant was interviewed by a different OPM investigator. During the interview, he explained that he volunteered at O from 2004 until he was terminated in 2017 or 2018. He assumed responsibility for O's finances and banking information. O received a $40,000 federal income tax refund, which Applicant deposited in his own account without O's approval or knowledge. During the interview, Applicant explained that he voluntarily stepped down from his financial role at O due to a disagreement with another member of the organization. He further explained that he was uncertain where to list his termination from O on his June 2023 e-QIP. The interview summary then reads as follows:

> A new treasurer in charge of the finance department [name redacted] took over [Applicant's] past position. Within a few weeks of [redacted] assuming [Applicant's] past role, he called [Applicant] and began to explain there was a discrepancy in where the tax refund went. [Applicant] immediately admitted to [the new treasurer] that he took the money. [Applicant] knew he would be caught when he left the position and felt badly about taking the money in the first place and expected to get in trouble. [Applicant] was immediately told he was terminated within 24 hours of telling [the new treasurer] about taking the money. [Applicant] was told he was terminated over the phone, and he never went to work in person. (GE 2 at 15-16)

During the September 2024 OPM interview, Applicant referred to his involvement at O as his "employment." As of this interview, Applicant's family and spouse were unaware of his theft. He was unsure if a confidentiality agreement was executed. He has never held signature authority for any other organization or business entity.

During the September 2024 security interview, Applicant said that he discontinued his use of marijuana in September 2023, following his previous OPM interview. He did, however, continue to purchase marijuana for his wife's use from a state-licensed dispensary. At the time of the September 2024 interview, the investigator advised Applicant that the purchase of marijuana remained illegal under federal laws. As of the interview, Applicant purchased marijuana edibles weekly for his wife to use as a sleep aid. He also reported that he had used marijuana monthly from about 2017 to September 2023. As of the September 2024 security interview, Applicant's spouse had not taken any steps to stop using marijuana. (GE 2 at 16-19)

In his August 21, 2025 response to DOHA interrogatories, Applicant confirmed the accuracy of the summaries of the September 2023 and September 2024 OPM interviews without any material corrections or additions. He attached a November 16, 2018 agreement between himself and O, wherein he agreed to repay $68,950. (GE 2 at 20-33)

At the hearing, Applicant admitted that he volunteered at O first coding software and later as treasurer. He further admitted that he had embezzled approximately $35,000-$38,000 and that the embezzlement was discovered within two or three weeks of him relinquishing his duties as treasurer. He stepped away from his role as treasurer over a disagreement with another O member. The theft caused "hard feelings and anger" from others in the organization, but the public blog post noting his and others' departure from O thanked him for his contributions and did not disclose the theft. He repaid approximately $68,000 as required by the agreement. (Tr. 23, 58-60)

Upon cross examination, Applicant admitted his involvement with O since 2004, first as a software developer, at the behest of his employer. Contrary to his prior statement during his 2023 interview, he testified that he served as treasurer for about five years.

There was no crosscheck of audit of his activities as treasurer until after his service as treasurer concluded. At the hearing, he initially testified that he had deposited the $50,000 check to O into his personal account. He reiterated that only a few weeks passed between his embezzlement, his relinquishment of treasurer duties, and the discovery of his embezzlement. Approximately two weeks after the discovery of the embezzlement, he was advised that he needed to leave the O project or be forced out. He denied falsifying or fabricating any monthly profit-and-loss statements, but he acknowledged that he had not listed the check to himself in O's check register. (Tr. 35-42)

Later in the hearing, Applicant stated that he had only been treasurer for 12 to 18 months, had embezzled the funds in 2016 or 2017, and had fully separated from O in January 2018. He also later testified that he deposited the refund check in O's account and then issued a $35,000 check to himself:

> So, what happened is I did not embezzle $50,000 dollars. I deposited the check to [O's] organization's account, and then wrote myself a check for $35,000, which is $15,000 among friends? And there was, I don't believe I ever falsified any spreadsheet data. Maybe I just didn't enter that check, and then – but it never crossed a reporting boundary to the organization, so when the next person came up, he said, hey, I am preparing the monthly report, and I see we have this check in the bank record to you, what is going on? So I left after the event, but before I had to do any financial reporting of it. (Tr. 66-67)

Through the settlement agreement, he agreed to pay $8,000 a quarter until restitution and legal expenses were paid. He liquidated some stocks to pay the debt. (Tr. 41-44, 63-66)

Applicant testified that he had not told anyone at E or in his family about his embezzlement. Following receipt of the SOR, he claimed to have provided copies of the two OPM interview summaries to his facility security officer (FSO). He had not discussed the embezzlement with the FSO and did not know whether she reviewed the interview summaries. When questioned why he had not disclosed this theft to his employer or family members, he explained that he still found the conduct "incredibly embarrassing" and that it may affect his personal standing with them. He testified that, if confronted by an individual seeking to influence him based upon this derogatory information, he would "probably" disclose the derogatory information to his employer and his family. (Tr. 44-46, 71-75)

Applicant's 2023 e-QIP was the first instance he completed an e-QIP or security questionnaire. At the hearing, he testified that he had not listed his affiliation with O on his e-QIP because he had not considered his participation to be "employment" but rather a volunteer activity akin to church membership. He stated, "I wasn't an employee of [O], I worked on [O] as part of my job." He denied any intent to withhold or omit information about his activities, and he expected he would disclose his theft during his security interview. He admitted that his volunteer activities with O arose during his September

2023 security interview after the investigator had asked about any financial delinquencies. Upon disclosing his mortgage delinquency in 2014, Applicant had explained how he had embezzled funds from O to resolve the delinquency. At the hearing, Applicant admitted that he had attested to the accuracy of the interview summaries in his response to DOHA interrogatories. (Tr. 22, 27, 247-48, 54-56)

At the hearing, Applicant admitted that he used marijuana, on fewer than 20 occasions, while in college. He also admitted that he had used cocaine and lysergic acid (LSD) in the 1980's. Between 2020 and September 2023, he used marijuana approximately 10 to 20 times. Completing the e-QIP did not alert Applicant to the illegality of his marijuana use and purchase. Upon learning, during the September 2023 OPM interview, that marijuana use remained illegal under federal drug laws, he stopped using marijuana. He continued to purchase marijuana for his wife's use. During his September 2024 OPM interview, he learned that purchasing marijuana also violated federal drug laws. Thereafter, Applicant's wife also stopped using marijuana. He claimed that he had believed, after the September 2023 interview, that only marijuana use and not its purchase was prohibited. He testified that he has never misused prescription drugs. No one at his employer is aware of his illegal drug use. He has no intent to use any illegal drugs in the future, and he does not associate with individuals who use illegal drugs. He has not participated in pre-employment or random drug screening, and it is his understanding that his employer only prohibits drug use at the workplace. (Tr.19, 29-32, 34, 57, 61-63, 69-70)

Applicant participated in financial training through his 401k manager and has stayed away from any role signing checks for any community or professional organizations. He disclosed the embezzlement during the first OPM interview because "it is a big deal." He testified that it was likely the government would not have learned about his theft had he not disclosed it. (Tr. 24)

After the hearing, Applicant submitted a letter addressing the potential security concern that he may be vulnerable to influence because his family members and co-workers were unaware of his theft. In his letter, he claimed that he informed "several people, including [his] wife, [name redacted], and [his] boss, [name redacted]. He also claimed to have informed four colleagues about his theft. (AE A, AE F)

Whole Person

Applicant submitted four character-reference letters in support of his clearance eligibility. Two letters were authored by professional associates but not co-workers of Applicant. One individual noted that she and Applicant had recently chatted about "his issues with [O's] books." She noted that she has had "occasional" contact with Applicant over the last decade through meetings and email distribution lists, and she considers him to be an honest individual. The second professional associate described Applicant as empathetic and trustworthy. He stated, "A few weeks ago, [Applicant] and I discussed his self-report incident. [Applicant] explained the incident, the reasons for it, and the internal organization's resolution. There appears to [be] no attempt to hide the incident as [Applicant] expressed a willingness to discuss the incident with others." (AE B, AE C)

An individual employed with the same federal contractor as Applicant praised him as security-focused but did not indicate any awareness of the theft. The fourth reference was the president of O at the time of the theft. He stated:

> In 2018, [Applicant] transferred project funds whilst in the middle of an acrimonious divorce for personal benefit and without authorization from other directors or project members. This was entirely unexpected and very much uncharacteristic of any of [Applicant's] past or subsequent actions. When we discovered what occurred, [Applicant] admitted to the incident and through mutual agreement we arranged a legal settlement for repayment of the amounts involved and the legal costs associated with the agreement and repayment process. As of early 2020 all agreed amounts were repaid and from the point of view of [O] the matter was entirely closed. (AE E)

He had no reservations about working with Applicant. (AE D, AE E)

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 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;
>
> (c) credible adverse information in several adjudicative areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information;
>
> (d) credible adverse information that is not explicitly covered under any other guideline and many not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-persona assessment of questionable judgment,

untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or governmental protected information;

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

Applicant admitted that, while entrusted with fiduciary duties as treasurer of O, he impermissibly drafted a check to himself for $38,000, embezzling funds from the organization. He did not report his transgression but later admitted culpability when a discrepancy was discovered. The timing of the embezzlement (between 2014 and 2018) and its discovery (late 2018) were not clearly established by the record evidence. The delay in its discovery and any reporting responsibilities disregarded by Applicant to mask his theft are aggravating circumstances. Applicant's theft and violation of his fiduciary duties patently constitute serious security concerns; however, his criminal conduct is appropriately addressed under Guideline F, *infra*. Because the conduct alleged under SOR ¶ 1.a. is sufficient for an adverse determination under Guideline F and is explicitly covered under Guideline F, none of the personal conduct security concerns (AG ¶¶ 16(c) and 16(d)) are established as to SOR ¶ 1.a.

The SOR alleges that Applicant falsified his June 2023 e-QIP by deliberately omitting his "employment" with and termination from O (SOR ¶¶ 1.b. and 1.c.). The e-QIP does not include any definition or description of what activities qualify as "employment." The Merriam-Webster Dictionary defines "employ" both in terms of "to use or engage the services of" and "to provide with a job that pays wages or a salary." Applicant testified that he was "invited" onto a project and that he volunteered his software-coding services to benefit O at the behest of his employer. His travel to professional conferences was paid by his employer and not O. He credibly explained that he had not considered his activities at O to qualify as employment. I conclude that Applicant's omission of his activities on behalf of O and his involuntary separation from O do not constitute a deliberate omission or falsification in the context of AG ¶ 16(a).

Applicant did not list his marijuana use between 2020 and approximately June 2023 under Section 23 of his June 2023 e-QIP (SOR ¶ 1.d.). He denied deliberately falsifying his response to the query and credibly explained that he had not understood, at the time he completed his e-QIP, that marijuana use violated Federal drug laws. This explanation is consistent with the explanation he provided the OPM investigator during his September 2023 security interview. I conclude that Applicant's omission of his marijuana use, in light of his misunderstanding of the query, does not constitute a deliberate omission or falsification in the context of AG ¶ 16(a).

During his two OPM interviews and at the hearing, Applicant admitted that his family members and supervisors were unaware of his embezzlement from O (SOR ¶ 1.e.). He acknowledged that, despite the age of the criminal conduct, he still found it "incredibly embarrassing." He agreed that he had not revealed the conduct to his supervisors because it may affect his personal standing with them. He testified that, if confronted by an individual seeking to influence him based upon this derogatory information, he would "probably" disclose the derogatory information to his employer and his family. The record evidence established that the information about the embezzlement creates a vulnerability to exploitation, manipulation, or duress for Applicant. AG ¶ 16(e)(1) applies.

The following personal conduct mitigating condition under AG ¶ 17 is potentially relevant:

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

As of the hearing, Applicant remained concerned that the revelation of his embezzlement may negatively impact his personal standing with his supervisors and his family members. In his post-hearing submission, he stated, without corroboration, that he had informed his wife and supervisor of his embezzlement. He provided four letters in support of his clearance eligibility that also indirectly addressed the security concerns about his vulnerability to coercion, manipulation, or duress. Two letters from professional associates not with Applicant's current employer, vaguely reference conversations with Applicant about "issues with [O's] books" and a "self-report incident." There is no mention of any embezzlement or theft. A third letter, from a co-worker at Applicant's employer, makes no mention of the theft. The fourth letter, from the current president of O, noted Applicant's "transfer" of funds for personal benefit and without authorization, Applicant's admission following the discovery of the theft, and his restitution.

The factfinder's assessment of an individual's credibility is not an all-or-nothing endeavor. A mixed credibility finding is both permissible and at times necessary.

> In courtrooms across the county, triers of fact can and regularly do find parts of testimony credible and other parts incredible. Indeed, federal courts typically instruct juries that they may do just that. *See* 3 Fed. Jury Prac. & Instr. 101:43 (6th ed.) ("In deciding the facts, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, part of it, or none of it.") . . . . .

> Indeed, the Supreme Court's recent *Ming Dai* decision found no reason to treat the agency factfinders differently from any other reasonable factfinder. In discussing the Board's authority, the Court stated that an "agency, like any reasonable factfinder, is free to credit part of [a] witness' testimony without necessarily accepting all of it. It does not matter whether the agency accepts all, none, or some of the [witness'] testimony; its reasonable findings may not be disturbed." *Ayala-Osegueda v. Garland*, 92 F.4th 220, 230 (4th Cir. 2024) (quoting *Garland v. Ming Dai*, 141 S. Ct. at 1669, 1677 (2021).

In the present case, Applicant voluntarily revealed his embezzlement to the OPM investigator in September 2023, discussed his criminal conduct again during his September 2024 interview, and admitted his criminal conduct in his August 2025 response to interrogatories and in his Answer. His admissions reflect several inconsistencies, particularly as to the timing of his criminal conduct and its discovery. While I found Applicant to be mostly candid and credible about his criminal conduct and his ongoing concerns about his personal standing if this conduct was disclosed to his family and supervisors, I have significant doubts and credibility concerns about his uncorroborated statements that he discussed his criminal conduct with his spouse and supervisor. As noted above, Applicant provided inconsistent statements about when the criminal conduct occurred, which is relevant to how long it remained hidden. Furthermore, there is no evidence that his other family members and co-workers are aware of his criminal conduct. Given his acknowledged concerns about the revelation of this information, the lack of corroboration, and the vague references made by two professional associates, I do not find Applicant's statements that he informed his spouse and supervisor of his theft to be credible. This mixed credibility determination is congruent with the *Ming Dai* and *Ayala-Osegueda* holdings, *supra*.

The DOHA Appeal Board has held that the only mitigating condition relevant to AG ¶ 16(e) security concerns is AG ¶ 17(e). *See* ISCR Case No. 22-01002 at 5 (App. Bd. Sep. 26, 2024) Applicant admitted at hearing that his supervisors and family members were unaware of his embezzlement and that such information remained a concern in the context of his personal standing. As discussed above, he has not credibly established that has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress. AG ¶ 17(e) does not apply. He did not mitigate the personal conduct security concerns.

Guideline H: Drug Involvement and Substance Misuse

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.

Director of National Intelligence (DNI) Memorandum ES 2014-00674, "Adherence to Federal Laws Prohibiting Marijuana Use," October 25, 2014, states:

> [C]hanges to state laws and the laws of the District of Columbia pertaining to marijuana use do not alter the existing National Security Adjudicative Guidelines. . . . An individual's disregard of federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations. As always, adjudicative authorities are expected to evaluate claimed or developed use of, or involvement with, marijuana using the current adjudicative criteria. The adjudicative authority must determine if the use of, or involvement with, marijuana raises questions about the individual's judgment, reliability, trustworthiness, and willingness to comply with law, rules, and regulations, including federal laws, when making eligibility decisions of persons proposed for, or occupying, sensitive national security positions.

In 2021, the Security Executive Agent (SecEA) promulgated clarifying guidance concerning marijuana-related issues in security clearance adjudications. It states in pertinent part:

> [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 number of 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.[1]

The guideline notes several conditions that could raise security concerns under AG ¶ 25. The following is potentially applicable:

(a) any substance misuse.[2]

During his September 2023 OPM interview, Applicant admitted that he had used marijuana approximately once every one or two months between 2020 and September 2023. During his September 2024 OPM interview, he admitted using marijuana monthly from about 2017 to September 2023. In his August 2025 response to DOHA interrogatories, he admitted using marijuana six to eight times between 2020 and September 2023. He did not identify any discrepancies in the frequency or span of his marijuana use as outlined in his two OPM interviews. AG ¶ 25(a) applies.

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 testified that he had been unaware that marijuana use was prohibited under Federal law and prohibited for federal contractors until the September 2023 OPM interview. He further testified that, despite learning of this prohibition, he continued to purchase marijuana for his wife until the September 2024 OPM interview. He claimed that

[1] *Security Executive Agent Clarifying Guidance Concerning Marijuana for Agencies Conducting Adjudications of Persons Proposed for Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, dated December 21, 2021 (SecEA Clarifying Guidance), at p. 2.

[2] Applicant's illegal purchase of marijuana was not alleged in the SOR.

his wife decided to cease her own marijuana use following the September 2024 interview. Since his September 2023 OPM interview, he has repeatedly expressed his intent to abstain from marijuana use in the future. There is no record evidence of any continued association with any drug users or environments where drugs are used. Notwithstanding Applicant's poor judgment by continuing to purchase marijuana for his wife following his September 2023 interview, there is no evidence of any illegal drug involvement since September 2024. AG ¶¶ 26(a) and 26(b) apply. Applicant mitigated the drug involvement and substance misuse 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 is potentially applicable in this case:

> (d) deceptive of illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust.

As discussed above, Applicant embezzled approximately $38,000 from the entity for which he was treasurer. He violated his fiduciary duties when he drafted a check to himself without authority and misappropriated the funds. AG ¶ 19(d) applies.

Conditions that could mitigate 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 initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶¶ 20(b), 20(c), and 20(d) do not apply. As to AG ¶ 20(b), even if Applicant's mortgage delinquency resulted from circumstances largely beyond his control, he did not act responsibly by embezzling funds. Although restitution was completed, there is no evidence of financial counseling beyond consultation with a 401k advisor. This is insufficient to apply AG ¶ 20(c) in full. As for AG ¶ 20(d), Applicant's payments in restitution were agreed upon to stave off legal action or criminal charges and do not constitute a "good-faith effort."

A critical aspect of the AG ¶ 20(a) analysis is the delay between Applicant's theft, its discovery, and any steps taken by Applicant to mask his theft. He provided inconsistent information as to the timing of his theft, which he first reported as 2014 during his September 2023 security interview. The settlement agreement, dated November 2018, marks the approximate date of the discovery of the theft. During his 2023 OPM interview, he claimed that he stepped down as treasurer a few months after the theft. At the hearing, he claimed he stepped down two or three weeks after the theft. This timeline is relevant given his obligation as treasurer to provide monthly financial reports to the principals at O. Moreover, he admitted that he did not report the check drafted to himself on the check register.

Applicant testified that he has not served in a fiduciary role in any professional, religious, or community organization since his embezzlement. Besides his marijuana use and purchase, which he had believed at the time to be licit, there is no record evidence of criminal conduct, financial malfeasance, or breach of fiduciary duty since his embezzlement. Notwithstanding the gravity of Applicant's embezzlement, over seven years have passed since his criminal conduct. AG ¶ 20(a) applies.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for access to classified information 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 Guideline E, Guideline H, Guideline F, and the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant's character references praised his honesty and focus on security; however, only one reference indicated full awareness of his embezzlement. Over seven years have passed since his criminal conduct; however, he remained "incredibly embarrassed" of his conduct and concerned for his personal standing as of the hearing. I did not accept his uncorroborated statements that he informed his supervisor and spouse of his theft, and, even if these individuals were informed, other family members and co-workers remain unaware of his criminal conduct. Applicant mitigated the drug involvement and financial considerations security concerns; however, he did not mitigate the personal conduct security concerns. Eligibility for access to classified information is denied.

This decision should not be construed as a determination that Applicant cannot obtain a security clearance in the future. If he establishes that he has taken steps to eliminate his potential vulnerability to coercion or manipulation, he may overcome the aforementioned 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 E:	AGAINST APPLICANT
Subparagraphs 1.a.-1.d.:	For Applicant
Subparagraph 1.e.:	Against Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraph 2.a.:	For Applicant
Paragraph 3, Guideline F:	FOR APPLICANT
Subparagraph 3.a.:	For 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 national interest to grant Applicant's eligibility for access to classified information.

Eric H. Borgstrom
Administrative Judge