



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



In the matter of:)
)
-----) ISCR Case No. 12-09294
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel
For Applicant: *Pro se*

02/27/2013

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding drug involvement, personal conduct, and financial considerations. Eligibility for a security clearance and access to classified information is denied.

Statement of the Case

On December 15, 2010, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing version of a Security Clearance Application (SF 86).¹ On an unspecified date, the Department of Defense (DOD) issued him a set of interrogatories. He responded to the interrogatories on April 10, 2012.² On an unspecified date, the DOD issued him another set of interrogatories. He responded to those interrogatories on April 10, 2012.³ On an unspecified date, the DOD issued him another set of interrogatories. He responded to those interrogatories

¹ GE 1 ((SF 86), dated December 15, 2010).

² GE 2 (Applicant's Answers to Interrogatories, dated April 10, 2012).

³ GE 3 (Applicant's Answers to Interrogatories, dated April 10, 2012).

on April 10, 2012.⁴ On May 21, 2012, the DOD issued him another set of interrogatories. He responded to those interrogatories on June 12, 2012.⁵ The DOD issued a Statement of Reasons (SOR) to him on August 10, 2012, under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline H (Drug Involvement), Guideline E (Personal Conduct), and Guideline F (Financial Considerations), and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

It is unclear when Applicant received the SOR. It is equally unclear when he requested a hearing before an administrative judge. However, Applicant responded to the SOR on September 10, 2012. Department Counsel indicated the Government was prepared to proceed on December 13, 2012, and the case was assigned to me on January 4, 2013. A Notice of Hearing was issued on January 18, 2013, and I convened the hearing, as scheduled, on February 12, 2013.

During the hearing, ten Government exhibits (GE 1 through GE 10) and three Applicant exhibits (AE A through AE C) were admitted into evidence without objection. Applicant and one other witness testified. The transcript (Tr.) was received on February 22, 2013. I kept the record open to enable Applicant to supplement it, but Applicant did not take advantage of that opportunity.

Findings of Fact

In his Answer to the SOR, Applicant admitted two factual allegations (§§ 1.a. and 1.b.) pertaining to drug involvement; one factual allegation (§ 2.b.) pertaining to personal conduct; as well as nine factual allegations (§§ 3.a., 3.b., 3.f., 3.h., 3.j., and 3.m. through 3.p.) pertaining to financial considerations of the SOR. He denied the remaining allegations. Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 53-year-old employee of a defense contractor who, since January 1980, has served in a number of different positions, including the structures assembly line, in the mail room, and as a plant service worker (janitor). He has no military service.⁶ He was previously granted a secret security clearance in 2003,⁷ but does not

⁴ GE 4 (Applicant's Answers to Interrogatories, dated April 10, 2012).

⁵ GE 5 (Applicant's Answers to Interrogatories, dated June 5, 2012).

currently have a security clearance.⁸ In his SF 86, Applicant indicated that, as of December 2010, it had been over 24 months since he had held a security clearance.⁹

Applicant was married in June 1981, separated in March 2004, and divorced in December 2011. He has been engaged since May 2012. Applicant and his ex-wife have five daughters, born in 1982, 1983, 1987, 1989, and 1993. He is a June 1977 high school graduate.

Drug Involvement

Applicant is a substance abuser whose choice of substances was marijuana and crack cocaine. He used marijuana on a few occasions while in high school.¹⁰ In about 2008, Applicant started using crack cocaine. He purchased an unspecified quantity of the substance from drug dealers for as much as \$300 per week, and used it during weekends with several individuals whom he did not know.¹¹ He continued to use crack cocaine, at times on a weekly basis, until at least June 2010.¹² He attributed his use of crack cocaine to “a lot of hardship, lot of hard times, lot of marital problems with my former wife, and I just kind of misled in the wrong direction.”¹³ Financial issues contributed to his actions.¹⁴

The crack cocaine use finally ceased when he determined that it was affecting his health.¹⁵ He experienced some serious health issues, and at one point, he was in a coma for three weeks.¹⁶ Nevertheless Applicant never received medical treatment or drug rehabilitation treatment for his drug abuse.¹⁷ Applicant realized that using drugs was not only bad for his health, but was against his religion, and he did not like the person that he had become while he was using crack cocaine. He was ashamed, and regretted his actions.¹⁸ He sought help from the employee assistance program (EAP),

⁶ GE 1, *supra* note 1, at 16.

⁷ GE 1, *supra* note 1, at 37-38.

⁸ GE 1, *supra* note 1, at 38; Tr. at 7.

⁹ GE 1, *supra* note 1, at 38.

¹⁰ Tr. at 37-38. Applicant’s marijuana use was not alleged in the SOR, and since there is no evidence of any more recent use of marijuana, it is not of any current security significance.

¹¹ GE 5 (Personal Subject Interview, dated January 31, 2011), at 1; Tr. at 38-41.

¹² Applicant’s Answer to the SOR, dated September 10, 2012, at 1.

¹³ Tr. at 38.

¹⁴ GE 5, *supra* note 11, at 2.

¹⁵ GE 5, *supra* note 11, at 1-2.

¹⁶ Tr. at 45.

¹⁷ GE 2 (Applicant’s Answer to Interrogatories, dated April 10, 2012), at 4.

and received unspecified assistance on five or six occasions from June 2010 until October 2010.¹⁹ He attended Narcotics Anonymous (NA) meetings from October 2010 until December 2010, and followed that up with unspecified counseling from his pastor.²⁰ Applicant has abstained from further drug use since June 2010, and there is no evidence of a continuing drug problem. He intends to not use illegal drugs in the future.²¹

The SOR alleged that Applicant's use of crack cocaine occurred after he had been granted a security clearance. Applicant denied the allegation and explained that his security clearance had ended and he had already been debriefed in August 2008, before he started using crack cocaine.²² There is no evidence to refute Applicant's contention.

Personal Conduct

In June 2008, Applicant incurred a hand injury in an unspecified accident at home. He went to an office at work to obtain a band-aid, and in a moment of panic, stated that the accident had occurred on the job. He completed an injury report. When it was determined that the injury report was false, he received unspecified disciplinary action from his employer.²³ He subsequently acknowledged that it was "a bad mistake on my part."²⁴

On December 15, 2010, when Applicant completed his SF 86, he responded to a question pertaining to the illegal use of drugs or drug activity. Question 23a asked if, in the last seven years, he had illegally used any controlled substance, including crack cocaine, and Applicant answered "no."²⁵ He certified that the response was "true, complete, and correct" to the best of his knowledge, but the response to the above question was, in fact, false. Applicant subsequently acknowledged that he concealed his drug use when he completed his SF 86, and explained that he was scared that he would not get a security clearance if he told the truth.²⁶

¹⁸ Tr. at 45.

¹⁹ GE 5, *supra* note 11, at 2; Tr. at 46.

²⁰ GE 5, *supra* note 11, at 2; Tr. at 46. Applicant stated that his pastor has experience as a marriage counselor, and assumed he had experience in drug and alcohol counseling as well. There is nothing in the record to support his assumption.

²¹ GE 2, *supra* note 12, at 2.

²² Tr. at 40-41; Applicant's Answer to the SOR, *supra* note 12, at 1; AE A (Statement, dated September 10, 2012).

²³ Tr. at 48, 56.

²⁴ Tr. at 56.

²⁵ GE 1, *supra* note 1, at 36.

²⁶ GE 5, *supra* note 11, at 1; Tr. at 44-45.

Financial Considerations

In 1995 or 1996, Applicant was experiencing financial difficulties because his wife wasn't working and he incurred the financial burdens of the family. He filed for bankruptcy under Chapter 13 of the U. S. Bankruptcy Code, and after making the required payments to the bankruptcy trustee, the bankruptcy was eventually discharged.²⁷

It is unclear when Applicant's finances transitioned from current to delinquent, for Applicant indicated that after the bankruptcy, his accounts were paid up, but that financial problems continued. He stated that his new financial problems commenced in 2003 because of the continuing difficulties with his wife, and the fact that he had more debt than he could afford without her help.²⁸ As a result, accounts started to become delinquent, placed for collection, or charged off, judgments were obtained, and a state tax lien was filed.²⁹ Applicant acknowledged that, to a certain extent, by spending money for crack cocaine, it affected his ability to pay some of his financial obligations, but he denied that his current delinquencies were because of those diverted funds.³⁰

In January 2003, Applicant was interviewed by an investigator from the Defense Security Service (DSS). They discussed various accounts that were described as delinquent, in collection, charged off, or in judgment. While Applicant did not recognize some of the accounts, he did acknowledge other accounts. He stated he would resolve the accounts he recognized, and find out about the remaining accounts.³¹ In January 2011, Applicant was interviewed by an investigator from the U.S. Office of Personnel Management (OPM). They discussed a larger number of accounts that were also described as delinquent, in collection, charged off, or in judgment. Once again, while Applicant did not recognize some of the accounts, he did recognize other accounts, and vowed to resolve them as he had indicated eight years earlier.³²

In April 2012, Applicant referred to a number of his delinquent accounts, and indicated he either had made arrangements to pay them off, or would do so soon because some of the debts were small. He also denied having the telephone numbers for some of the creditors to discuss his options.³³ The SOR identified 16 purportedly continuing delinquencies, totaling approximately \$20,768. Those accounts fall within four categories: a) those for which he has made limited efforts to set up repayment

²⁷ GE 6 (Statement, dated January 30, 2003), at 1; Tr. at 76-77.

²⁸ Tr. at 76; GE 6, *supra* note 27, at 1.

²⁹ GE 5, *supra* note 11, at 2-4; GE 4 (Applicant's Answer to Interrogatories, dated April 10, 2012), at 2-10; GE 10 (Combined Experian, TransUnion, and Equifax credit report, dated January 11, 2011).

³⁰ Tr. at 38-39.

³¹ GE 6, *supra* note 27, at 1, 3.

³² GE 5, *supra* note 11, at 2-4.

³³ GE 4, *supra* note 29, at 2-10.

arrangements; b) those for which he has made no such efforts; c) those which he contended he paid off under a settlement agreement, but had no documentation to support his contentions of either a settlement agreement or a payment; and d) those which Applicant denied were his responsibility. Those accounts that come within the first category, are four accounts (SOR ¶¶ 3.a. (\$6,611), 3.b. (\$160), 3.m. (\$50), and 3.n. (\$50)). Those accounts that come within the second category, are the vast majority of the SOR accounts (SOR ¶¶ 3.c. (\$5,370), 3.d. (\$1,246), 3.e. (\$419), 3.f. (\$50), 3.h. (\$204), 3.i. (\$2,449), 3.j. (\$547), 3.l. (\$1,494), 3.o. (\$1,193), and 3.p. (\$250)). He contends he entered into a settlement arrangement with one creditor (SOR ¶ 3.g. (\$473)) and had paid it off. He denied that he was responsible for one account (SOR ¶ 3.k. (\$202)).

Three credit reports from 2012 reflect Applicant's continuing delinquencies.³⁴ As noted above, Applicant offered no documentation to support his contention that he had held discussions with some creditors or had paid off one creditor. Furthermore, Applicant's explanations as set forth in his answers to interrogatories, in his statements, in his Answer to the SOR, and his testimony during the hearing, are inconsistent and contradictory. Accounts that supposedly had repayment arrangements did not actually have any such arrangements. Some accounts that were previously recognized by Applicant are no longer recognized. Other accounts were to be investigated by Applicant, but never were. When questioned as to his reasons for not making payments on even the smallest of his debts, he indicated that he had other financial obligations which had priority; his impending wedding expenses, a school loan, an automobile loan, and a portion of his mother's bills.³⁵ As of the closing of the record, there is no evidence that Applicant has resolved any of the SOR debts.

Applicant's net monthly earnings are about \$3,000, and after paying his necessary monthly bills, he has approximately \$2,000 remaining for discretionary spending or saving.³⁶ Applicant never received financial counseling.³⁷

Character References and Work Performance

Several co-workers have stated that Applicant worked in the mailroom for a little over a month in 2012, and that he performed in such a reliably manner that there no complaints regarding his performance.³⁸ Applicant's fiancée has known him since high school. She believes Applicant's reputation in the community for honesty, integrity, and trustworthiness, is good.³⁹ On May 20, 2012, Applicant became an ordained minister.⁴⁰

³⁴ GE 9 (Equifax credit report, dated March 5, 2012); GE 7 (Equifax credit report, dated June 28, 2012); GE 8 (Equifax credit report, dated December 13, 2012).

³⁵ Tr. at 49, 54.

³⁶ Tr. at 51-54.

³⁷ Tr. at 71.

³⁸ AE B (Character Reference, dated September 10, 2012).

³⁹ Tr. at 33.

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.”⁴¹ 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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”⁴²

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

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. 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 meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”⁴³ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.⁴⁴

⁴⁰ AE C (Certificate of Ordination, dated May 20, 2012).

⁴¹ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁴² Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

⁴³ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “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).

⁴⁴ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials."⁴⁵

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."⁴⁶ Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline H, Drug Involvement

The security concern relating to the guideline for Drug Involvement is set out in AG ¶ 24:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

(a) Drugs are defined as mood and behavior altering substances, and include:

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and

(2) inhalants and other similar substances;

⁴⁵ *Egan*, 484 U.S. at 531

⁴⁶ See Exec. Or. 10865 § 7.

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 25(a), *any drug abuse (see above definition)*, is potentially disqualifying. Also, AG ¶ 25(c) might apply when there is *illegal drug possession, including . . . purchase. . . .* Similarly, AG ¶ 25(g) may apply when there is *any illegal drug use after being granted a security clearance*. Applicant admittedly purchased and used crack cocaine from about 2008 until at least June 2010. AG ¶¶ 25(a) and 25(c) have been established, but further comment is necessary regarding AG ¶ 25(g).

As for AG ¶ 25(g), in order for it to apply, there must be evidence that Applicant had been granted a security clearance and that it was still in a valid status during any portion of the period in which the drug abuse took place. The only evidence pertaining to a security clearance granted to Applicant appeared in his SF 86 where he stated that he had previously been granted a security clearance but that he had lost it and been debriefed before he started using crack cocaine. The Government offered no evidence to refute Applicant's contentions. AG ¶ 25(g) has not been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from drug involvement. Under AG ¶ 26(a), the disqualifying conditions may be mitigated where *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*. Under AG ¶ 26(b), drug involvement concerns may also be mitigated where there is

a demonstrated intent not to abuse any drugs in the future, such as: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; and (4) a signed statement of intent with automatic revocation of clearance for any violation.

As noted above, in about 2008, Applicant started purchasing and using crack cocaine. He generally used it during weekends with several other individuals until at least June 2010. He attributed his use of crack cocaine to a variety of reasons, including unspecified "hardship," unspecified "hard times," marital problems, and financial problems. Applicant's period of crack cocaine abuse occurred over a period of nearly three years. He has been abstinent for nearly that long. It is difficult to conclude that his drug involvement happened "so long ago," or "was so infrequent," or that it "happened under such circumstances that it is unlikely to recur," especially since Applicant has received no drug treatment or rehabilitation for his crack cocaine abuse, and he still has financial problems. Likewise, while Applicant has generally commented that his use of crack cocaine was bad for his health and was against his religion, other than his general statement, he has failed to provide a demonstrated intent not to abuse any drugs in the future. It is unclear if he has disassociated himself from his drug-using associates and contacts and avoided the environment where he used the crack cocaine. AG ¶¶ 26(a) and 26(b) partially apply, for considering Applicant's history of falsifications and

statements with factual inconsistencies, I have little confidence in his current reliability, trustworthiness, or good judgment.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 16(a), it is potentially disqualifying if there is:

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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

In addition, under AG ¶ 16(c), it is potentially disqualifying when there is:

credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

AG ¶ 16(e) may apply where there is *personal conduct or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing. . . . Finally, association with persons involved in criminal activity*, may raise security concerns under AG ¶ 16(g).

In June 2008, Applicant submitted a false injury report to his employer, claiming that he had sustained a hand injury in the work place when he had not. For that misconduct, he received unspecified disciplinary action from his employer. In December 2010, when Applicant completed his SF 86, he responded to a question pertaining to the illegal use of drugs or drug activity within the past seven years. Applicant answered "no." He certified that the response was "true, complete, and correct" to the best of his knowledge, but the response to the question was, in fact, false. Applicant subsequently

acknowledged that he concealed his drug use when he completed his SF 86, and explained that he was scared that he would not get a security clearance if he told the truth. AG ¶¶ 16(a), 16(c), 16(e), and 16(g), have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct. AG ¶ 17(a) may apply if *the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts*. AG ¶ 17(c) may apply if *the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*. Also, AG ¶ 17(d) may apply if *the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur*.

Similarly, AG ¶ 17(e) may apply if *the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress*. Also, AG ¶ 17(g) may apply if *the association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations*.

Applicant's fiancée believes Applicant's reputation in the community for honesty, integrity, and trustworthiness, is good. His colleagues consider him to be a reliable worker. However, considering Applicant's history of falsifications and statements with factual inconsistencies, it is difficult to overlook his intentional falsification regarding his substance abuse in his SF 86, or even consider it to be aberrant behavior. Furthermore, it is unclear if he has disassociated himself from his drug-using associates and contacts. AG ¶¶ 17(a), 17(c), and 17(d), do not apply, and ¶¶ 17(e) and 17(g) partially apply.

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. . . .

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an *inability or unwillingness to satisfy debts* is potentially disqualifying. Similarly, under AG ¶ 19(c), a *history of not meeting financial obligations* may raise security concerns. In addition, AG ¶ 19(f) may apply if there are *financial problems that*

are linked to drug abuse. . . . Applicant's financial problems actually commenced in 1995 or 1996, but were resolved through a Chapter 13 bankruptcy, only to reemerge in 2003. Applicant acknowledged that, to a certain extent, by spending money for crack cocaine, it affected his ability to pay some of his financial obligations, but he denied that his current delinquencies were because of those diverted funds. Nevertheless, accounts became delinquent and were placed for collection or charged off. In addition, there was a judgment. AG ¶¶ 19(a), 19(c), and 19(f) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where *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*. Also, under AG ¶ 20(b), financial security concerns may be mitigated where *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, or a death, divorce or separation), and the individual acted responsibly under the circumstances*. Also, AG ¶ 20(c) may apply if *the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control*. Similarly, AG ¶ 20(d) applies where the evidence shows *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*.⁴⁷

AG ¶ 20(b) only partially applies. None of the other mitigating conditions apply. Applicant has continuing delinquencies. He attributed his earlier financial problems to difficulties with his wife, and the fact that he had more debt than he could afford without her help. He also went through a divorce in 2011. Yet, he failed to demonstrate how those circumstances were largely beyond his control.⁴⁸ He offered no documentation to support his contention that he had held discussions with some creditors, or had paid off one creditor. His explanations in his answers to interrogatories, in his statements, in his

⁴⁷ The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that she or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the "good-faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

⁴⁸ "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

Answer to the SOR, and his testimony during the hearing, are inconsistent and contradictory. Accounts that supposedly had repayment arrangements did not actually have any such arrangements. Some accounts that were previously recognized by Applicant are no longer recognized. Other accounts were to be investigated by Applicant, but never were. Applicant has made no “good-faith” effort to repay overdue creditors or otherwise resolve his debts. When questioned as to his reasons for not making payments on even the smallest of his debts, he indicated that he had other financial obligations which had priority; his impending wedding expenses, a school loan, an automobile loan, and a portion of his mother’s bills. Applicant never received financial counseling. As of the closing of the record, there is no evidence that Applicant has resolved any of the SOR debts. Because of the lengthy period of inaction in addressing his delinquent accounts, Applicant has not acted responsibly under the circumstances,⁴⁹ and it casts doubt on his current reliability, trustworthiness, or good judgment.

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(a):

- (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. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.⁵⁰

There is some evidence in favor of mitigating Applicant’s conduct. He has acknowledged making mistakes when he filed a false injury report, falsified material facts on his SF 86, and purchased and used crack cocaine. He now realizes those were foolish activities. He sought the assistance of the EAP. He resolved his earlier financial difficulties through a Chapter 13 bankruptcy.

⁴⁹ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

⁵⁰ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

The disqualifying evidence under the whole-person concept is more substantial. He filed a false injury report in 2008; he purchased and used crack cocaine from 2008 until at least June 2010; he lied on his SF 86 in 2010; and he ignored his delinquent debts. Applicant's stories related to his financial problems are inconsistent and contradictory. Applicant has made no "good-faith" effort to contact or repay overdue creditors or otherwise resolve his debts. Because of the lengthy period of inaction in addressing his delinquent accounts, Applicant has not acted responsibly under the circumstances, and it casts doubt on his current reliability, trustworthiness, or good judgment.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:⁵¹

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has ". . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his [or her] actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Applicant has demonstrated no "meaningful track record" of debt reduction and elimination. Instead, he has made no significant timely efforts to resolve his accounts. Overall, the evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has failed to mitigate the security concerns arising from his drug involvement, personal conduct, and his financial considerations. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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:

⁵¹ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge