



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



In the matter of:)
)
-----) ISCR Case No. 14-00046
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

06/24/2014

Decision

HARVEY, Mark, Administrative Judge:

Applicant used cocaine once in February 2012 while on active duty in the Army. Drug involvement and personal conduct concerns are mitigated because his cocaine use was an isolated event and not recent. Applicant's statement of reasons (SOR) and credit reports allege 12 delinquent debts totaling \$21,013. He paid one SOR debt for \$1,614 in May 2014. More evidence of circumstances beyond his control causing financial problems, inability to pay SOR debts, or progress resolving delinquent SOR debts is necessary to mitigate financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On August 19, 2012, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance application (Item 4). On February 28, 2014, the Defense Office of Hearings and Appeals (DOHA) issued an SOR to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guidelines F (financial considerations), H (drug involvement), and E (personal conduct). (Item 1) The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked.

On March 10 and April 16, 2014, Applicant responded to the SOR allegations and requested a decision without a hearing. (Item 3) A complete copy of the file of relevant material (FORM), dated April 28, 2014, was provided to him on May 6, 2014. He was afforded an opportunity to file objections and to submit material in refutation, extenuation, or mitigation.¹ On May 26, 2014, Applicant responded to the FORM. On June 9, 2014, Department Counsel provided comments concerning the FORM response, but did not object to consideration of that evidence. The case was assigned to me on June 19, 2014.

Findings of Fact²

Applicant's SOR response admitted all of the SOR allegations and provided some clarifying or mitigating information. (Item 3) His admissions are accepted as factual findings.

Applicant is a 36-year-old employee of a defense contractor. (Item 4) Applicant graduated from high school in 1996, and he has not attended college. He married in 1997 and divorced in 2005; he married in 2006 and divorced in 2011; and he married in 2012 and is separated from his current spouse. (Item 7) He has two children who are ages 15 and 2. (Item 7)

Applicant served on active duty in the Army from May 2005 to May 2012.³ His military occupational specialty (MOS) was wheeled vehicle mechanic. He served two tours in Iraq (a total of 16 months). He earned the following decorations and medals during his Army service: Iraq Campaign Ribbon with two campaign stars; Army Commendation Medal (2nd Award); Army Achievement Medal (4th Award); Meritorious Unit Commendation; Army Good Conduct Medal (2nd Award); National Defense Service Medal; Global War on Terrorism Service Medal; Noncommissioned Officer Professional Development Ribbon; Army Service Ribbon; and Overseas Service Ribbon. He also completed various MOS and leadership-related training courses over his seven years of active duty service. He did not hold a security clearance when he was in the Army.

¹The DOHA transmittal letter is dated April 28, 2014, and Applicant's receipt is dated May 6, 2014. The DOHA transmittal letter informed Applicant that he had 30 days after his receipt to submit information.

²Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

³The information in this paragraph is from Applicant's SF 86 and DD Form 214. (Items 1, 7)

Applicant was unemployed from May to August 2012. (Item 7) He worked as a maintenance technician for a defense contractor in Southwest Asia from September 2012 to September 2013. (Item 7)

Financial Considerations

Applicant's SOR and credit reports allege 12 delinquent debts totaling \$21,013 as follows: (1) telecommunications collection debt in ¶ 1.a (\$233); (2) bank collection debt in ¶ 1.b (\$6,563); (3) cable television debt in ¶ 1.c (\$108); (4) bank collection debt in ¶ 1.d (\$486); (5) telecommunications debt in ¶ 1.e (\$869); (6) bank debt in ¶ 1.f (\$870); (7) Defense Finance and Accounting Service (DFAS) debt for an overpayment while he was on active duty in ¶ 1.g (\$1,614); (8) collection debt in ¶ 1.h (\$1,555); (9) charged-off debt for an apartment in ¶ 1.i (\$6,118); (10) telecommunications debt in ¶ 1.j (\$1,567); (11) telecommunications debt in ¶ 1.k (\$266); and (12) telecommunications debt in ¶ 1.l (\$764). (Item 1) Several debts have been delinquent for more than four years.

In his SOR response, Applicant admitted responsibility for all of the debts and explained that he made a \$500 payment to address the debt in SOR ¶ 1.g (\$1,614). (Item 3) In his FORM response, Applicant said in May 2014, he paid three debts owed to the Government: the debt in SOR ¶ 1.g (\$1,614) and two non-SOR debts for \$943 and \$243. He is seeking additional information to verify his responsibility for the debt in SOR ¶ 1.b (\$6,563). He did not provide documentation showing he disputed responsibility for the debt in SOR ¶ 1.b with the creditor or credit reporting companies.

Drug Involvement and Personal Conduct⁴

Applicant used cocaine with some friends in March 2012 after consuming about 10 beers. In March 2012, his urine tested positive on a urinalysis test for the presence of the cocaine metabolite. After he left the Army, he did not associate with the friends that provided the cocaine to him.

Applicant's commander punished him for cocaine use under Article 15, Uniform Code of Military Justice (UCMJ). He received 45 days restriction, 45 days extra duty, reduction to the grade of private, and forfeiture of half of one month's pay for two months. In May 2012, he received a general discharge under honorable conditions under Army Regulation 635-200, *Active Duty Enlisted Administrative Separations*, paragraph 14-12c, which is discharge for commission of a serious offense—abuse of illegal drugs. (DD Form 214) He has not received treatment for alcohol or drug abuse.

Applicant consistently disclosed his cocaine use to Army Criminal Investigation Command (CID) investigators in April 2012, on his SF 86, to an Office of Personnel Management (OPM) investigator during his September 24, 2013 personal subject interview (PSI), and in his SOR response.

⁴Unless stated otherwise, the information in this section is from Applicant's September 24, 2013 Office of Personnel Management (OPM) personal subject interview (PSI). (Item 7)

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 Defense or his designee to grant applicant’s 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. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. 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 about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense 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

The SOR alleges the relevant security concerns are under Guidelines F (financial considerations), H (drug involvement), and E (personal conduct).

Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

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.

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts,” and “(c) a history of not meeting financial obligations.” In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] he is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant’s history of delinquent debt is documented in his credit reports, September 24, 2013 OPM PSI, and SOR response. Applicant’s SOR alleges 12 delinquent, collection, or charged-off debts, totaling \$21,013. After crediting Applicant with mitigating the debt in SOR ¶ 1.g (\$1,614) because it is paid, 11 delinquent debts totaling \$19,399 remain unresolved. Several debts have been delinquent for more than four years. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

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

(b) the conditions that resulted in the financial problem were largely beyond the 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;

(c) 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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;⁵ and

(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.

The Appeal Board concisely 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

⁵The 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 he or she relied on a legally available option (such as bankruptcy) 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)).

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).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant’s conduct in resolving his delinquent debt does not warrant full application of any mitigating conditions to all of his SOR debts; however, he provided some mitigating information. He is credited with paying three debts owed to the Government: the debt in SOR ¶ 1.g (\$1,614) and two non-SOR debts for \$943 and \$243. He is seeking additional information to verify his responsibility for the debt in SOR ¶ 1.b (\$6,563).

Applicant did not act responsibly under the circumstances. On September 24, 2013, during his OPM interview, Applicant received notice of his delinquent debts. That notice was reinforced when he received the SOR and FORM. He had an opportunity to provide evidence of circumstances beyond his control causing financial problems, inability to pay SOR debts, or progress resolving delinquent SOR debts. Applicant did not provide sufficient information about his finances, such as his income while working as a contractor in Southwest Asia, to establish his inability to pay his creditors. Applicant did not receive financial counseling. He did not provide financial documentation relating to 11 SOR creditors as follows: maintenance of contact with creditors;⁶ correspondence to or from these 11 creditors; credible debt disputes; attempts to negotiate payment plans; or other evidence of progress or resolution of these 11 SOR debts. There is insufficient evidence that his financial problems are being resolved, are under control, and will not reoccur in the future.

Drug Involvement

AG ¶ 24 articulates the security concern concerning drug involvement:

[u]se 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.

⁶“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.

Three drug involvement disqualifying conditions in AG ¶¶ 25(a), 25(b), and 25(c) could raise a security concern and may be disqualifying in this case: “any drug abuse”⁷ “testing positive for illegal drug use,” and “illegal drug possession.” These three disqualifying conditions apply because Applicant possessed and used cocaine.⁸ His cocaine use was detected using a urinalysis test. He admitted his cocaine use to a CID investigator in April 2012, to an OPM investigator, and in his SOR response. He possessed cocaine before he used it.

AG ¶ 26 provides for potentially applicable drug involvement mitigating conditions:

- (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) 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.
- (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.

⁷ AG ¶ 24(b) defines “drug abuse” as “the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.”

⁸ AG ¶ 24(a) defines “drugs” as substances that alter mood and behavior, including:

- (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.

Schedules I, II, III, IV, and V, as referred to in the Controlled Substances Act are contained in 21 U.S.C. § 812(c). Cocaine is a Schedule II Controlled Substance. See Drug Enforcement Administration listing at http://www.deadiversion.usdoj.gov/21cfr/cfr/1308/1308_12.htm.

AG ¶ 26(a) can mitigate security concerns when drug offenses are not recent. There are no “bright line” rules for determining when such conduct is “recent.” The determination must be based “on a careful evaluation of the totality of the record within the parameters set by the directive.” ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). For example, the Appeal Board determined in ISCR Case No. 98-0608 (App. Bd. Aug. 28, 1997), that an applicant’s last use of marijuana occurring approximately 17 months before the hearing was not recent. If the evidence shows “a significant period of time has passed without any evidence of misconduct,” then an administrative judge must determine whether that period of time demonstrates “changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation.”⁹

Applicant’s one-time use of cocaine was in March 2012 about 27 months ago. He recognized the adverse impact on his life due to drug abuse in connection with access to classified information as well as the impact on his family and career. Cocaine possession and use violates the UCMJ. He ended his association with the person who provided cocaine to him after he left active duty in the Army. AG ¶ 26(a) applies to his cocaine-related offense.¹⁰

Applicant demonstrated his intent not to abuse illegal drugs in the future. He used cocaine once, and there is no pattern of drug abuse. He has changed his life with respect to illegal drug use. He has abstained from drug abuse for about 27 months. AG ¶ 26(b) partially applies.

⁹ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). In ISCR Case No. 04-09239 at 5 (App. Bd. Dec. 20, 2006), the Appeal Board reversed the judge’s decision denying a clearance, focusing on the absence of drug use for five years prior to the hearing. The Appeal Board determined that the judge excessively emphasized the drug use while holding a security clearance, and the 20 plus years of drug use, and gave too little weight to lifestyle changes and therapy. For the recency analysis the Appeal Board stated:

Compare ISCR Case No. 98-0394 at 4 (App. Bd. June 10, 1999) (although the passage of three years since the applicant’s last act of misconduct did not, standing alone, compel the administrative judge to apply Criminal Conduct Mitigating Condition 1 as a matter of law, the Judge erred by failing to give an explanation why the Judge decided not to apply that mitigating condition in light of the particular record evidence in the case) with ISCR Case No. 01-02860 at 3 (App. Bd. May 7, 2002) (“The administrative judge articulated a rational basis for why she had doubts about the sufficiency of Applicant’s efforts at alcohol rehabilitation.”) (citation format corrections added).

In ISCR Case No. 05-11392 at 1-3 (App. Bd. Dec. 11, 2006) the Appeal Board, considered the recency analysis of an administrative judge stating:

The administrative judge made sustainable findings as to a lengthy and serious history of improper or illegal drug use by a 57-year-old Applicant who was familiar with the security clearance process. That history included illegal marijuana use two to three times a year from 1974 to 2002 [drug use ended four years before hearing]. It also included the illegal purchase of marijuana and the use of marijuana while holding a security clearance.

¹⁰In ISCR Case No. 02-08032 at 8 (App. Bd. May 14, 2004), the Appeal Board reversed an unfavorable security clearance decision because the administrative judge failed to explain why drug use was not mitigated after the passage of more than six years from the previous drug abuse.

AG ¶¶ 26(c) and 26(d) are not applicable because Applicant did not abuse prescription drugs. Cocaine was never prescribed for him. He was not evaluated for drug abuse or addiction, and he did not receive a prognosis of low probability of recurrence of drug abuse.

In conclusion, Applicant started and ended his drug abuse in March 2012, about 27 months ago. The motivations to stop using illegal drugs are evident.¹¹ The absence of cocaine use for 27 months establishes that it is also unlikely to recur, and his one-time cocaine use does not cast doubt on Applicant's reliability, trustworthiness, or good judgment. He has shown or demonstrated a sufficient track record of no drug abuse to eliminate drug involvement as a bar to his access to classified information. Drug involvement concerns are mitigated.

Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Three personal conduct disqualifying conditions under AG ¶ 16 are potentially applicable. Those three disqualifying conditions provide:

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

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information 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. This includes

¹¹ Approval of a security clearance, potential criminal liability for possession of drugs and adverse health, employment, and personal effects resulting from illegal drug use are among the strong motivations for remaining drug free.

but is not limited to consideration of: . . . (3) a pattern of . . . or rule violations; and

(e) 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. . . .

AG ¶¶ 16(c) and 16(d) do not apply. As indicated in the financial considerations section, there is sufficient information for an adverse security clearance determination without resort to the catch-all provisions of AG ¶ 16(c). Moreover the SOR in ¶ 2.a does not cite SOR ¶ 1 (financial considerations) as the basis for AG ¶ 16(c). SOR ¶ 2.a simply repeats the misconduct discussed in the previous section under the drug involvement guideline and recites his nonjudicial punishment and administrative general discharge under honorable conditions for misconduct. AG ¶ 16(d) does not apply.

AG ¶ 16(e) and the general judgment and unwillingness to comply with rules have some application. When Applicant engaged in the conduct alleged under the drug involvement disqualifying conditions, he engaged in conduct which showed extremely poor judgment and adversely affected his personal, professional, and community standing. See ISCR Case No. 11-12202 at 4-5 (App. Bd. June 23, 2014) (noting a personal conduct judgment and trustworthiness concern even though conduct alleged was already covered under another guideline, and citing the collateral consequences of that conduct as being relevant but not dispositive). Further analysis concerning applicability of mitigating conditions is required.

The mitigating condition in AG ¶ 17(c) provides, "(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment." AG ¶ 17(c) has two components that mirror the components in AG ¶ 16(a). Applicant cocaine use in March 2012 is not recent and it is infrequent, as it occurred on a single occasion. The absence of cocaine use for 27 months establishes that it is also unlikely to recur and does not cast doubt on Applicant's reliability, trustworthiness, or good judgment.

The scope of Applicant's security-related conduct is thoroughly addressed under Guideline H. He disclosed his drug use to Army investigators in April 2012, on his SF 86, to the OPM investigator in his PSI, and in his SOR response. I do not believe Applicant could be coerced or pressured into release of classified information by threats of public disclosure of the negative information detailed under Guideline H, *supra*. SOR ¶ 2.a is found for Applicant for the same reasons as security concerns are mitigated under Guideline H.

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. I have incorporated my comments under Guidelines F, H, and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

There is some evidence supporting approval of Applicant's clearance. Applicant honorably served his country for seven years in the Army, including 16 months in Iraq. He received numerous medals, awards, and promotions during his military service, including two Army Good Conduct Medals. He admitted his cocaine possession and use to CID investigators in April 2012, in his September 24, 2013 OPM PSI, and in his April 16, 2014 SOR response. He knows the consequences of illegal drug use, and I am confident that he has the ability to abstain from illegal drug use. There is no evidence of disloyalty or that he would intentionally violate national security. His character and good work performance show some responsibility, rehabilitation and mitigation.

The evidence against approval of Applicant's clearance is more substantial at this time. Applicant used cocaine after consuming 10 beers on one occasion in March 2012 while on active duty in the Army. His cocaine possession is a serious criminal offense and shows lack of judgment. He risked arrest and prosecution for cocaine possession and use under the UCMJ. He did not voluntarily come forward and admit his cocaine use, as his cocaine use was first detected by a urinalysis test. Applicant paid one SOR debt for \$1,614 in May 2014, and 11 delinquent SOR debts totaling \$19,399 remain unresolved. He did not provide sufficient documentation to establish circumstances beyond his control caused his financial problems, his inability to pay SOR debts, or his failure to make more progress resolving delinquent SOR debts. He did not establish that he is serious about resolving his delinquent SOR debts in a timely manner. Applicant is 36 years old, and he is sufficiently mature to be fully responsible for his conduct. His financial judgment lapses raise questions about Applicant's current reliability, trustworthiness, and ability to protect classified information; however, I am satisfied that if he continues to abstain from illegal drug use, avoids future offenses, and makes greater progress paying or resolving his delinquent debts, he will eventually have future potential for access to classified information.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude drug involvement and personal conduct concerns are mitigated; however, financial considerations concerns are not mitigated. For the reasons stated, I conclude he is not currently eligible for access to classified information.

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:	AGAINST APPLICANT
Subparagraphs 1.a to 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h to 1.l:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline H:	FOR APPLICANT
Subparagraph 3.a:	For 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.

Mark Harvey
Administrative Judge