



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-03623
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline Jeffreys, Esquire, Department Counsel

For Applicant: Nickolas G. Petersen, Esquire

June 16, 2009

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant completed Electronic Questionnaires for Investigations Processing (e-QIP) certified on August 7, 2007. On July 31, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline H (Drug Involvement) and Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised Adjudicative Guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

In a response dated September 11, 2008, Applicant denied the Guideline H allegations, noting his disagreement with the wording of the allegations in terms of the dates and frequency of drug use. With regard to Guideline F, he admitted to 8 of the 14 allegations raised. Applicant also requested a hearing before a DOHA Administrative Judge. I was assigned the case on December 15, 2008. Department Counsel and

Applicant proposed a February 4, 2009, hearing, and a Notice of Hearing was issued to that effect on January 16, 2009.

The hearing took place as scheduled. An amended Answer to the SOR, dated January 22, 2009, was received during the hearing. That Answer denied all allegations under Guideline F. After a series of objections regarding potential evidentiary submissions,¹ testimony was given by Applicant and five witnesses for Applicant. The witnesses consisted of Applicant's wife, his employer, and three character witnesses. Accepted into the record as evidence were six documents from Department Counsel, designated as exhibits (Exs.) 1-6.² Applicant's proffer of 17 documents was accepted as Exs. A-Q. Applicant was given leave to supplement the record after the close of the hearing. A post-hearing package of submissions, dated February 19, 2009, was forwarded to Department Counsel. On March 2, 2009, I received a copy of that submission and a statement from Department Counsel that she had no objection to its contents. Those documents were accepted into the record as Exs. R-BB and the record was closed.³ In the interim, the transcript (Tr.) was received on February 23, 2009. Based upon a review of the case file, exhibits, and testimony, security clearance is granted.

Findings of Fact

Applicant is a 31-year-old photo optic technician earning approximately \$52,000 a year. He has worked for the same defense contractor for approximately two years. He earned an associate of arts degree in May 1999. Applicant has been married for a little over one year and the couple has an infant child. He also has a six-year-old child from a previous relationship for whom he pays regular child support.⁴

Applicant was born into a military family in which illegal drugs were not tolerated.⁵ Being home-schooled, he was not exposed to drugs in high school. After completing college in May 1999, Applicant left home and started work at a camera rental business, working a regular 9-to-5 job. At that point, his focus was on building a career, although

¹ Tr. 14-36.

² At times, the transcript misidentifies the number of documents offered by Department Counsel and accepted into the record, *see, e.g.*, pages 2 and 17. The proper number is six, as shown at page 14.

³ Ex. R (Cover letter to submission package) contains a table of contents for documents designated as "a" through "k," but does not include any documents identified as "a" or "b". It does, however, include an additional document that has been accepted as Exhibit YY. There is no break in the facsimile transmission pagination to indicate an electronic transmission failure. *Contrast* Department Counsel's Memorandum for Administrative Judge Regarding Post Hearing Submissions, dated Feb. 19, 2009.

⁴ The child's mother did not want to marry, wished to remain a single mother, and made no request for child support. On his own initiative, Applicant "went and filed for child support against" himself in order to provide assistance for their son. Tr. 113-114.

⁵ Tr. 103. Applicant's mother once gave him a singular pill of one of her prescribed medications for anxiety or tension (Xanax, a benzodiazepine). Tr. 114-115.

he experimented with some drugs. The drugs “did not take hold” and he concentrated on his work.⁶ After three years, he decided to freelance in a capacity that permitted him to work on sets at the request of productions shooting in his town. He soon moved to a major metropolitan city to do the same type of work. It was a “glamorous lifestyle” where he met “movie stars and music stars, sports legends, political figures. . . .”⁷ When he first encountered drugs on the set, he was appalled. He soon realized it “was always around.”⁸ Eventually, he developed relationships with many of his transient co-workers. He started to use cocaine in 2002 along with those peers, particularly on the longer shoots offering significant overtime pay. He would sometimes contribute \$10 to a kitty on the set for its purchase.⁹ During this time, other drugs were tried with these peers.

In 2006, Applicant met the woman he subsequently would marry in 2008. They dated for about six months before she took the relationship seriously.¹⁰ She was concerned, however, with his lifestyle: “He worked when he got a job, so it was here and there. And he kind of lived the, I guess, a partyers [sic] lifestyle, drugs on the set.”¹¹ She began to recognize certain signs indicating when he had used drugs, noting he would become “very detached, emotionally. He was sloppy. He didn’t care about – – much about his looks, about his household. Just kind of unfocused. Very into himself.”¹² She also learned to link the presence of certain phone numbers and associates with his drug use. She noticed that his periods of drug use coincided with low finances.¹³ She did not wish to continue in a deepening relationship with a drug abuser. She spoke with him about his drug use, which she considered to be “unnecessary.”¹⁴ They “had very serious conversations about him stopping and not ever starting the use of drugs ever again and about what his future was.”¹⁵ He told her he would quit drugs, but he had a one-time relapse a few months later. Not wanting to jeopardize his relationship or to return to a drug-related lifestyle, he made the commitment to stop using drugs in around late February or early March 2007.¹⁶ He left the city and returned to their hometown. Since then, Applicant married his girlfriend, fathered the couple’s daughter,

⁶ Tr. 67.

⁷ Tr. 68.

⁸ Tr. 109.

⁹ Tr. 115.

¹⁰ Tr. 57.

¹¹ *Id.*

¹² Tr. 62.

¹³ Tr. 62-63.

¹⁴ Tr. 58.

¹⁵ *Id.*

¹⁶ Tr. 12, 61; Ex. B (Statement of Applicant, notarized Jan. 22, 2009).

dedicated himself to his current work, and became an active member of his wife's church. He also started coaching for the local Little League, where he currently serves on the board of directors.

Applicant admits his past drug use, but notes "I have definitely left that lifestyle and left that environment."¹⁷ Through testimony, he affirmed a notarized affidavit summarizing his past drug use and actions to quit drugs, and expressing his intent never to return to drug abuse.¹⁸ To the best of Applicant's wife's knowledge, as well as that of his boss and work peers, he has not used drugs since making the decision to quit abusing drugs.¹⁹ Drug free, she describes Applicant as a "wonderful husband" and the "best father."²⁰ She will "absolutely not" tolerate his return to drugs.²¹ She is aware of the signs of his drug use and is proactive on noting any potential signs.²² She vehemently testified that should she see any sign of potential drug use by her husband, she "would be furious and irate with him. [She] would probably pack up [their] daughter and leave him."²³ Since quitting drugs, his circle of friends has changed "dramatically."²⁴ He no longer associates with his former photography and drug using connections.²⁵ Their current circle of friends include contacts from Applicant's current place of employment, local Little League staff, and friends of Applicant's wife: "He likes all my friends, and I choose good people to hang out with and associate with."²⁶

At work, Applicant's supervisor has noticed no sign of drug use by Applicant, noting a person in Applicant's position could not exercise the requisite expertise and accuracy to execute Applicant's job functions.²⁷ A local Little League official describes Applicant as "a responsible and positive role model[,] an active participant in our

¹⁷ Tr. 100.

¹⁸ Ex. B (Applicant's Notarized Affidavit, dated Jan. 22, 2009); Tr. 19; content affirmed elsewhere in testimony, e.g., Tr. 100. Applicant's counsel stated that the format for this affidavit was taken from the DOHA website. Tr. 19. It appears to be intended to create a document meeting the requirements of Guideline H mitigating condition 2, AG ¶ 26(b).

¹⁹ Tr. 59, 53-54. 48, 43-46, 41-42.

²⁰ Tr. 57.

²¹ Tr. 59.

²² Tr. 62-63.

²³ Tr. 59-60.

²⁴ Tr. 63.

²⁵ *Id.*

²⁶ Tr. 64.

²⁷ Tr. 54; see also Tr. 42-43.

community and an outstanding representative of the league.”²⁸ Based on testimony by his supervisor and peers, Applicant’s reputation in the community is not one of a current drug user, at home, at work, or in his work with the local Little League.

Applicant was examined by a Licensed Mental Health Counselor/National Certified Counselor in January 2009. She noted that Applicant has “changed his lifestyle significantly and has been clean for the past two years. He displays emotional maturity and behaves responsibly. He has shown he is committed to family values and social responsibility.”²⁹ She concluded that Applicant “has demonstrated that he has overcome his past issues with substance abuse,” noting he is a “productive, reliable, and responsible person and will continue to serve the community in an even greater capacity if given the opportunity.”³⁰ Drug test reports executed on October 20, 2008, January 19, 2009, and February 3, 2009, reflect certifications by a medical doctor as having “negative” results for amphetamines, cannabinoids (including marijuana), cocaine (including crack cocaine), opiates (including heroin), and phencyclidine.³¹ Applicant’s employer maintains a Drug Free Workplace policy and Applicant is subject to a random drug testing policy.³² It reserves the right to conduct drug/alcohol screening “following supervisory or employee observation of suspected drug or alcohol use; any other event that could be reasonably construed to involve drug/alcohol abuse. . . .”³³

Applicant admits he has tried or used cocaine, crack, heroin, and marijuana in the past. The record reflects inconsistencies, however, with regard to the time and frequency of his drug use. Applicant disclosed his past drug use in his security application. He was then interviewed on the matter on October 5, 2007, which was the source for the SOR allegations. Applicant’s subsequent responses disclosed more specific responses, resulting in inconsistencies in the record between the interview notes, Applicant’s initial SOR response, and his amended response with regard to cocaine use. Applicant credibly testified in terms of dates and frequency roughly equivalent with the information contained in the amended response.³⁴

²⁸ Ex. G (Little League Official’s letter, undated).

²⁹ Ex. H (Letter, dated Jan. 28, 2009).

³⁰ *Id.*

³¹ Ex. E and Ex. L (Drug testing reports), Ex. M (Five Panel Drug Screen profile); Tr. 81-82.

³² Ex. C (Company Policy Manual) at 11-12.

³³ *Id.* at 12.

³⁴ See Tr. 74.

SOR	SOR Response	Amended SOR Response ³⁵
COCAINE - used “up to five times per month, from about 2002 to at least March 2007” ³⁶	“used cocaine approximately 1 to 2 times per month, but not every month, from 2002 to 2005, approximately 2 to 5 times per month from 2005 to” March 2007	used cocaine from about 2002 “and continued to do so once a month or every other month until 2005 when his cocaine use increased to 2-5 times each month until 03/2007”
CRACK - used “from 2005 to at least 2006” ³⁷	“used crack approximately 3 or 4 times in the Fall of 2005, a couple of times (approximately two) between 2005 and 2006 and discontinued use thereafter”	“smoked crack between 3 and 4 times in the fall of 2005 and again a couple of times between 2005 and 2006”
HEROIN - “in at least the spring and summer of 2005”	“used heroin two or three times in the Spring and Summer of 2005, and discontinued use thereafter”	used “heroin as an experiment [2 or 3 times] in the spring and summer of 2005”
MARIJUANA - “from 2002 to at least 2007”	used marijuana “a total of three times between 2002 and 2005 and discontinued thereafter”	used “marijuana a total of 3 times between 2002 and 2007” ³⁸

All these dates are approximate, based not on a record, but on personal estimates.

In his security clearance application, Applicant admitted having had delinquent accounts in the past or at the time of his application. Stating that his answer was based on estimates, he enumerated five accounts of which he then had knowledge. This included a possible IRS balance from an estimated time frame of April 2003, although he stated “it is my intention to find out how much I *might* owe and pay it off.” (Emphasis

³⁵ In amending his Answer, Applicant wrote that the SOR sources are based on “partial quote[s] from an October 5th, 2007, interview with government officials” which contain “material” omissions.

³⁶ *Contrast* Tr. 74-76.

³⁷ No frequency is given with regard to crack, heroin, or marijuana use. Consequently, there is no material inconsistency with regard to the frequency with which Applicant abused these drugs.

³⁸ Consistent with his original SOR Response, Applicant’s testimony at the hearing was that he only used marijuana through 2005.

in the original). He was unaware of some of the delinquent accounts on his credit report.³⁹

At issue in the SOR are the following 14 delinquent debts, as depicted as entries in credit reports dated August 16, 2007, and June 23, 2008. They include balances for immediate medical care, most of which were initially attributed directly to Applicant before his employer processed his paperwork for company health insurance coverage. Most of the remainder of the debts were originally incurred when Applicant was freelancing, between 2002 and 2006. Of those debts, seven are now paid in full (approximately \$9,150), two have been paid or otherwise deleted from Applicant’s credit report within seven years (approximately \$2,600), the status of two accounts remains unknown (approximately \$700), two debts were deleted as error (approximately \$575) and an IRS liability was not substantiated.⁴⁰ The accounts at issue are as follows:

CREDITOR/SOR ALLEGATION #	STATUS	SOURCE
1.a - Telecommunication collection (\$379)	Deleted from credit report	Ex. P, Ex. R ⁴¹
1.b - Medical bill (\$67)	Unknown; no evidence of payment	Ex. R; Tr. 119 ⁴²
1.c - Medical bill (\$142)	Paid	Ex. S ⁴³
1.d - Creditor (\$669)	Unknown; no evidence of payment	See Ex. R
1.e - Creditor (\$5,536)	Paid	Ex. T ⁴⁴

³⁹ See, e.g., Tr. 87.

⁴⁰ In closing, Department Counsel conceded that the Government’s “primary concern” is Guideline H. Tr. 124.

⁴¹ At hearing, Applicant testified this obligation belonged to a former roommate and the matter was being examined. Ex. P (Debt status, dated Feb. 4, 2009). After hearing, Applicant wrote that he was submitting as enclosure a) a document showing the \$379 balance was settled for \$126. As noted, *supra*, the submission contained no such document. However, in Ex. 5 (Credit report, dated Aug. 16, 2007), the entry notes that the account was reported and has a date of last activity shown as September 2002, less than seven years ago. The record and the Applicant have demonstrated that none of the subsequent credit reports from 2008 or 2009 reference either that collection agent or underlying creditor. Consequently, its deletion can be assumed to be the result of satisfaction or removal for error, not because the entry was stale.

⁴² Applicant’s post-hearing submission indicates that enclosure b) shows satisfaction of this obligation, but there is no corresponding document noting either that amount or the referenced collection agent. Applicant’s Ex. Q (Credit report, dated Feb. 4, 2009), however, reflects it remains on his credit report as unpaid.

⁴³ A receipt showing a zero balance for account number containing –52066 corresponds to its entry in Ex. 5 (Credit report, dated Aug. 16, 2007) for an account including that same numerical sequence.

⁴⁴ Ex. T reflects a collection effort for \$5,536 with a current balance of zero.

1.f - Cable TV bill (\$196)	Deleted from credit report	Ex. P, Ex. Q, Ex. R, Ex. 3 ⁴⁵
1.g - Telecommunication collection (\$172)	Paid; account in good standing	Ex. U ⁴⁶
1.h - Insurance bill (\$81)	Paid	Ex. V
1.i - Insurance bill (\$101)	Paid	Ex. W
1.j - Medical bill (\$2,288)	Paid or deleted from credit report after successful dispute	Ex. 3, Ex. Q, Ex. R ⁴⁷
1.k - Medical bill (\$356)	Paid or deleted from credit report as error	Ex. 4, Ex. 3, Ex. Q; Tr. 122 ⁴⁸
1.l - Medical bill (\$2,672)	Paid	Ex. AA ⁴⁹
1.m - Medical bill (\$442)	Paid	Ex. BB ⁵⁰
1.n - IRS debt (no amount indicated) ⁵¹	Debt not established	Ex. P; Tr. 94, 123 ⁵²

⁴⁵ Ex. 5 shows that this account was opened in 2006 for cable service. In Ex. P, Applicant stated this creditor was unable to locate his account. He testified he had disputed this account. Applicant's 2009 credit report, Ex. Q, and the Government's 2008 credit report, Ex. 3, no longer reflect the entry as derogatory information.

⁴⁶ Ex. U shows telecommunication account including account numbers –70075 with a zero balance.

⁴⁷ This account was not noted in the Government's Ex. 5 (Credit report, dated Aug. 16, 2007) or Ex. 3 (Credit report, dated Jan. 29, 2009, nor does it appear in Applicant's Ex. Q (Credit report, dated Feb. 4, 2009). It only appears in the intervening Government Ex. 4 (Credit report, dated Jun. 23, 2008) for an account with a date of last activity in 2007. That credit report also notes that Applicant disputed this entry. Inasmuch as seven years have not passed, it may be assumed that its deletion from subsequent credit reports proffered by both the Government and Applicant indicates its satisfaction or deletion as error.

⁴⁸ This debt is first reflected in Applicant's June 2008 credit report, Ex. 4, where it is noted as having been listed in January 2008. It does not appear in his 2007 credit report, nor does it appear in any of the subsequent credit reports. Consequently, it can be concluded the account has been paid or deleted as error.

⁴⁹ After hearing, Applicant submitted Ex. AA (Collection statement, undated) indicating payment for this exact balance was made to this collection agent for account including the numerical sequence of –15431 at some time in 2007. The credit report entry reflects that same amount and account number sequence.

⁵⁰ Ex. BB (Collection statement, dated Oct. 21, 2008) notes that account containing the number sequence –53906 now has a zero balance. That is the same account noted in the June 2008 credit report (Ex. 4).

⁵¹ This obligation was not noted in any of the credit reports submitted by either party.

⁵² Based on Applicant's security clearance estimate that he "might" owe a balance to the IRS from an estimated time period of April 2003, the SOR alleges an IRS indebtedness incurred in 2003. Applicant notes he has made inquiries as to whether he has a balance owed. He wrote "The IRS does not have me on record as owing them money." He also notes it is not in his credit reports. He testified that after investigation, he does not now believe he owes any taxes. Tr. 94, 123. There is no official evidence of any IRS liability.

Applicant currently nets approximately \$3,100 per month after taxes, garnishments, child support, and health/dental/vision insurance.⁵³ After paying rent, utilities, cable, internet, car insurance, phone service, his wife's student loan, and a 10% tithe to his church, he has a remainder of approximately \$621 per month to save or spend on other expenses. He is now timely on his payment of bills.⁵⁴ While providing for his family, their needs are not extravagant. The majority of their social time is spent with friends from their church or the Little League, or entertaining office associates and friends at home. At work, he is considered a valuable asset and has received recognition for his performance and work ethic.⁵⁵ He is particularly noted for his precision with intricate and delicate optic materials.⁵⁶ He has been recognized for taking over one of his company's operations and nearly doubling its success rate in a very short period.⁵⁷

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense decision. Under AG ¶ 2(c), this 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 access to classified information will be resolved in favor of national security." 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by

⁵³ Tr. 83-84.

⁵⁴ Tr. 86.

⁵⁵ Tr. 97-98; *see also* witness testimony, Tr. 36-55.

⁵⁶ Witness testimony, Tr. 36-55.

⁵⁷ Tr. 98.

Department Counsel. . . .⁵⁸ The burden of proof is something less than a preponderance of evidence.⁵⁹ The ultimate burden of persuasion to obtain a favorable clearance decision is on the applicant.⁶⁰

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. The Government reposes a high degree of trust and confidence in 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 protect or 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.

Section 7 of Executive Order 10865 provides that 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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶¹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁶² The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁶³ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I agree the following adjudicative guidelines are the most pertinent to the evaluation of the facts in this case:

Guideline H - Drug Involvement. *The Concern:* 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. “Drugs” are defined as mood and behavior altering substances, and include drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended, (e.g., marijuana or cannabis, depressants,

⁵⁸ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁵⁹ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁶⁰ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶¹ *Id.*

⁶² *Id.*

⁶³ Executive Order 10865 § 7.

narcotics, stimulants, and hallucinogens) and inhalants and other substances. “Drug abuse” is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.⁶⁴

Guideline F - Financial Considerations. *The Concern:* Failure or an 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.⁶⁵

Conditions pertaining to these adjudicative guidelines that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, are set forth and discussed in the conclusions below.

Analysis

GUIDELINE H

Applicant admits he used various illegal drugs with varying frequency between 2002 and February 2007. He also once took a Xanax for anxiety or tension, which was given to him by his mother. Occasionally, Applicant also contributed to the purchase of drugs on the set of his assignments while freelancing in a major city. Consequently, both Drug Involvement (DI) Disqualifying Conditions (DC) AG ¶ 25(a) (*any drug abuse*) and AG ¶ 25(c) (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*) apply. With disqualifying conditions thus established, the burden shifts to Applicant to mitigate security concerns.

Applicant left a regimented upbringing and eventually found himself in a big city working in what seemed to be a unique and glamorous environment. Drug use he initially found surprising and antithetical to the work soon seemed as commonplace as the celebrities he routinely encountered. He succumbed to its use as he became closer to his drug using associates and their cosmopolitan culture, as well as the possibility of double pay for overtime. Since that time, he has sworn off drugs, moved back to his hometown, married a strong willed woman who is adamantly against drug use and his former lifestyle/profession, changed his circle of friends, became a father, and refocused himself on his work and hometown community involvement. Additionally, although the extent of her examination is unknown, he was given a highly favorable assessment by a licensed counselor. Such assessment is due some degree of consideration. Applicant’s conduct and the unique environment in which he used drugs stands in large contrast to the passionate resolve and strong character he now displays in his more recent situation. Given his return home, his family’s and professional peers’ influence and support, and Applicant’s personal resolve, there is no reason to believe he would give up his refocused life and revert to drug use. Under such facts, DI

⁶⁴ Revised Adjudicative Guideline (AG) ¶ 24.

⁶⁵ AG ¶ 18.

Mitigating Condition (MC) AG ¶ 26(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*) applies.

Cocaine was Applicant's drug of choice, with lesser use of crack, marijuana, and some experimentation with heroin. Consequently, DI MC AG ¶ 26(c) (*abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended*) does not apply. Similarly, although Applicant was given a favorable analysis by a licensed counselor, he did not undergo a prescribed drug treatment program. DI MC AG ¶ 26(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*) does not apply.

With his former girlfriend's help, Applicant realized how far he had deviated from his initial goals and upbringing while living what appeared to be a sophisticated lifestyle. Wanting to return to his original professional goals and to not lose his girlfriend, he quit drugs and the freelance life in his former milieu, ceased contact with those who use drugs, moved back home from the city, found a professional niche that was both challenging and enjoyable, wooed and won his bride, completely changed his circle of friends, became a "wonderful husband" and "the best father," joined a church, and become civically involved. He has thrived in this new environment and demonstrated a complete turnaround in his lifestyle. While this nearly two and one half year period may be argued to be recent, recency is not an explicit bar to mitigation under this guideline. Under facts and circumstances unique to this particular case, Applicant's period of abstinence is an appropriate period given the personal transformation and showing of resolve he has demonstrated in that time. This conclusion is shared by a licensed counselor as well as his wife and peers. All of these facts bolster the fact he has certified and repeatedly stated his firm intent not to return to drugs in the future. Such facts raise sections (1), (2), and (3) of DI MC AG ¶ 26(b) (*a documented 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*).

With the aid of counsel, Applicant signed a statement reflecting he is aware of Department of Defense drug policies and understands future drug use could result in the loss of a security clearance and his current employment. In it, he also stated that he has no intention of ever resuming illegal drug use. This notarized statement of intent not to resume drug use was obviously executed as an attempt to invoke section (4) of DI MC AG ¶ 26(b) (*a signed statement of intent with automatic revocation of clearance for any violation*). While technically it lacks an automatic revocation clause, its basis on a DOHA example to meet this mitigating condition gives sufficient basis to conclude this condition is met in part, with its technical deficiency duly noted.

Since giving up drugs in February 2007, Applicant has dramatically turned his life around from freelancing bachelor with a drug habit to a family man and settled

professional who is spiritually and civically active. His professional success and obvious devotion to his family, combined with the persuasive testimony of both his peers and his wife, do not reflect a man likely to return to drugs. Indeed, in light of the facts and testimony, the Applicant at present is one possessing the requisite reliability, trustworthiness, maturity, judgment, and willingness to comply with laws and rules expected of any individual seeking a security clearance.⁶⁶ Guideline H security concerns are mitigated.

GUIDELINE F

Applicant was aware of some, but not all, of the derogatory information contained in his credit reports when he executed his security clearance application. While many of the enumerated accounts in the SOR were previously paid or entered in error, several entries reflected genuinely delinquent accounts. Consequently, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and FC DC AG ¶ 19(c) (*a history of not meeting financial obligations*) apply. With such conditions raised, the burden is placed on Applicant to overcome the case against him and mitigate security concerns.

Nearly half of the accounts at issue were for immediate medical care occurring before Applicant's current employer had processed his medical insurance application. Evidence was provided showing all but a \$67 balance of that debt has been addressed. Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (*the conditions that resulted in the behavior 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*) applies.

The accounts at issue were mainly created between 2002 and 2007. Since that time, Applicant has given up drugs and left his former lifestyle, factors his wife suggests used to impact his finances. Today, he lives within budget. More than one delinquent account, however, remains to be either paid or further investigated. While Applicant has acted responsibly since learning of these accounts, Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(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*) does not apply.

Of those delinquent debts cited in the SOR, seven are now paid in full, two have been paid or otherwise deleted from Applicant's credit report within seven years, the current status of two accounts remains unknown, two debts were deleted as error, and the alleged IRS debt was credibly explained as based on error. Applicant is still pursuing information on his two unknown and unresolved debts, involving a manageable amount of, at most, about \$700. Given these facts, FC MC AG ¶ 20(d) (*the*

⁶⁶ Such character traits strike to the core of the concerns underlying Guideline H. See AG ¶ 24.

individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies.

Applicant disclosed what he thought were all of his delinquent accounts, including one which ultimately proved to be nonexistent. He successfully disputed some accounts and paid others. Only two accounts, representing no more than \$700, remain at issue. He is continuing to pursue their resolution. Otherwise, Applicant is living drug-free, has stable employment, and is providing for his family within his means. Given Applicant's testimony and evidence with regard to the resolution of the accounts at issue, I conclude financial considerations security concerns are mitigated.

Whole Person Concept

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(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 public trust position must be an overall common sense 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, as well as the "whole person" factors noted above. Applicant is a credible and focused young man who has the support of his equally credible witnesses. Applicant's wife's demeanor and testimony was particularly credible, often critical and always candid. With regard to Guideline F, Applicant has made significant strides in addressing his delinquent debt, is committed to staying solvent and saving for his family's future, and is now living within his means. He has also removed himself from the temptations of his former milieu. Applicant provided persuasive evidence that his financial situation is now under control and that he is currently able to save for future contingencies. Remaining are concerns regarding Guideline H.⁶⁷

Speaking against Applicant are his selection of drugs and both the length and frequency of his drug use. In particular, cocaine, crack, and heroin are notoriously "hardcore" drugs.⁶⁸ As noted by Department Counsel, they are particularly addictive. Despite his seemingly regular use of cocaine over a five year period and his more

⁶⁷ See, e.g., Tr. 124.

⁶⁸ Applicant also consumed a Xanax given to him by his mother from her personal prescription.

sporadic use of other drugs during a shorter time span, however, there is no indication that he developed an addiction so nagging as to prevent him from quitting drugs successfully for nearly two and a half years, turning his life completely around, and successfully engaging in highly intricate work. But for his past drug use, today's Applicant appears to be a model father, employee, and rising community leader.

Many more facts speak for Applicant. When persuaded by his girlfriend to give up his freelancing lifestyle in a big city, he did so. His sole relapse was shortly after he moved home, on his one visit back to his old environment before ultimately giving up drugs for good in February or March of 2007. While that occasion triggered a relapse, it was also a learning experience. He has demonstrated that his nearly two and a half years of abstinence was an appropriate period inasmuch as he has accomplished considerably more than most similarly situated individuals. He has matured and demonstrated his ability to remain drug-free and thrive. Eschewing contact with his old associates, residence, and lifestyle, he has built a new career and family life in his hometown community. Unlike the situation with the mother of his first child, his wife is as committed to their marriage, their family, and their current lifestyle, as he is. As a couple, they are mutually supportive. Similarly, his employer is highly supportive of Applicant, a valued and devoted employee capable of delicate and precise work. He has become involved in a local church and is active in his community. He is lauded for his professionalism on the job and for his community leadership working with children. He is surrounded by a positive and supportive network of family, associates, and friends, for which he appears properly appreciative.

Applicant's testimony revealed a man highly content with his current life and who is thoroughly resolved about staying drug-free. There is no indication that he would sacrifice his current life, work, or lifestyle, nor is there any indication he would ever consider returning to drugs or his former milieu. In light of such facts, and given his demonstrated growth and abstinence, no residual doubts remain. With drug involvement security concerns mitigated, clearance is granted.

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 H:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant

Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Clearance is granted.

ARTHUR E. MARSHALL, JR.
Administrative Judge