



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



In the matter of:)	
)	
)	ISCR Case No. 10-02608
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: Jeffrey Walsh, Personal Representative

January 6, 2012

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on May 11, 2009. On March 11, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations; Guideline J, Criminal Conduct; Guideline H, Drug Involvement; and Guideline E, Personal Conduct, to Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the 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.

On April 5, 2011, Applicant answered the SOR and initially requested a decision be made on the administrative record. He later changed his mind and requested a hearing before an administrative judge. Department Counsel was ready to proceed on April 21, 2011. The case was assigned to another administrative judge on October 24, 2011, and transferred to me on October 31, 2011. On that same date, a Notice of Hearing was issued, scheduling the hearing for November 17, 2011. The case was heard on that date. The Government offered seven exhibits which were admitted as

Government Exhibits (Gov) 1 – 7. Applicant testified, called four witnesses and offered six documents which were admitted as Applicant Exhibits (AE) A – F. The record was held open until December 1, 2011, to allow Applicant to submit additional documents. He timely offered an additional exhibit that was admitted as AE G. Department Counsel's response to AE G is marked as Hearing Exhibit (HE) I. The transcript was received on November 27, 2011. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, Applicant admitted to all SOR allegations.

Applicant is a 33-year-old network administrator for a Department of Defense contractor. He has worked for the defense contractor since September 2006. He is applying for a security clearance for the first time. He has an associates degree in information technology. He is a Microsoft certified system Engineer. He has an 11-year-old son from a prior marriage. He is currently engaged to the mother of his three daughters, ages 4, 17 months, and 4 months. (Tr at 46, 80; 108-109; Gov 1; Gov 3 at 3)

Guideline J, Criminal Conduct

When he was 12 years old, Applicant joined a local gang. He became involved in criminal activity and illegal drug use. On October 21, 1995, he was arrested and charged with Attempted Homicide – Assault with Firearm on Person. During his background investigation interview on June 22, 2009, Applicant explained that he was standing with some of his fellow gang members on a street. A rival gang drove past them. One of his fellow gang members pulled out a .38 caliber revolver and fired two to three shots towards the rival gang members. Applicant claims he did not have the gun, but could not recall who did the shooting. About three days after the incident, Applicant was arrested. The police told him that they had a witness who told them that he was the shooter. Applicant was in jail for 11 months pending his court case. He was tried as an adult. He pled guilty to Assault with a Deadly Weapon. He was sentenced to one year in jail with credit given for time served. Applicant told the investigator conducting the background investigation that he was not the shooter, but did not want to “rat” on a fellow gang member. When he was released from jail he was ordered to serve three years probation. (Tr. 73-74; Gov 3 at 5-6)

In November 1996, Applicant was arrested and charged with possession of marijuana and probation violation. This offense happened while Applicant was a high school student. A teacher found a baggie of marijuana in Applicant's shoe. He was found guilty in juvenile court and sentenced to six months in juvenile hall. He was expelled from high school. (Gov 3 at 10)

In January 1997, a fellow gang member stole a car. He gave the car to Applicant to drive. Applicant and several of his fellow gang members drove the car around. A police car attempted to pull him over. Applicant attempted to evade the police. The

police pursued his car. Applicant was stopped and arrested when he drove down a one-way street. He was charged with Grand Theft Auto and Evading Police. Applicant pled guilty. He was sentenced to four years in prison. He served three years and three months in prison. He was released from prison in 2000. (Tr. 81; Gov 3 at 7)

In August 2000, Applicant was arrested and charged with Possession of Marijuana. He was pulled over by police after he had made an illegal left turn. When the police officer asked him to get out of the car, a rolled cigarette fell out of the car. He pled guilty to the charges and was fined \$350 for the offense. (Tr. 81; Gov 3 at 10)

Applicant has had no criminal arrests since August 2000. He is currently attempting to have his criminal record expunged. (Tr. 18, 82)

Guideline H, Drug Involvement

Applicant started using marijuana when he was 14. He used marijuana about once or twice a week. He began to use cocaine when he was 17 years old. He used cocaine about every other day until he was arrested for Grand Theft Auto in 1997. The drugs were provided by neighborhood friends or he occasionally purchased drugs for his own use. He never sold drugs. (Gov 3 at 11)

In 1997, Applicant was introduced to heroin while serving time in prison. Friends he made in prison provided him heroin. He ingested the heroin through his nose. He occasionally bartered for heroin by providing food or grooming supplies. Heroin was easy to get in prison. He used heroin about once every two to three days. He would get sick if he was not using heroin. When he was released from prison in 2000, he stopped using heroin for about one year. He started using again about every two to three days. He began to inject heroin. His use increased to twice a day. He became more dependent on it and would purchase heroin from various dealers. (Gov 3 at 7)

Applicant's family suspected Applicant was using drugs. They contacted his parole officer and suggested that he drug test Applicant. He tested positive for heroin. His parole officer enrolled him in a three-month inpatient drug treatment program. Applicant attended this facility some time between 2001 and 2003. He successfully completed the program and was released from parole in 2003. He stayed drug free for six months, but began to use heroin again. He used about two times a day. He used heroin consistently until 2005. He was having issues with his mother. One night, he asked God for help and for strength to turn his life around and get off heroin. He had a conversation with his mother and voluntarily began to attend the facility where he completed his drug program. The facility allowed former patients to drop by and speak with counselors and fellow drug addicts. (Tr. 84-86; Gov 3 at 8)

In 2005, Applicant also voluntarily attended Narcotics Anonymous meetings. He met his sponsor at these meetings. With the help of his sponsor, and on his own initiative, he turned his life around. He initially attended meetings daily. He now attends meetings on Saturday mornings. He has not used illegal drugs since 2005, but will

always consider himself an addict. He does not intend to use drugs again. (Tr. 86-88, 101-102, 107; Gov 3 at 8)

Financial Considerations

Applicant's background investigation revealed that he has the following delinquent accounts: a \$299 medical account placed for collection (SOR ¶ 1.a: Gov 6 at 1; Gov 7 at 1); a \$250 medical account placed for collection (SOR ¶ 1.b: Gov 5 at 1; Gov 6 at 1; Gov 7 at 1); a \$1,499 account placed for collection in May 2009 (SOR ¶ 1.c: 2 at 5; Gov 4 at 3; Gov 5 at 2; Gov 6 at 2); a \$6,643 credit card account placed for collection in May 2009 (SOR ¶ 1.d: Gov 2 at 8; Gov 4 at 3; Gov 5 at 2; Gov 6 at 2; Gov 7 at 2); and a \$183 cell phone account placed for collection in November 2008. (SOR ¶ 1.e: Gov 4 at 5; Gov 5 at 2; Gov 6 at 2; Gov 7 at 2).

Additional delinquent accounts include: a \$14,338 debt owed after a car repossession in 2006 (SOR ¶ 1.f: Gov 4 at 15; Gov 5 at 2; Gov 6 at 2); a \$315 account placed for collection (SOR ¶ 1.g); a \$307 checking account debt placed for collection in May 2009 (SOR ¶ 1.h: Gov 2 at 6; Gov 4 at 14), and a \$202 cell phone account placed for collection in June 2007 (SOR ¶ 1.i: Gov 4 at 16).

Not alleged in the SOR, was a total of \$14,661 in delinquent student loans. Applicant entered a rehabilitation program which was successfully completed on August 7, 2010. He is now making payments on his student loans. (Gov 2 at 7)

The following is a summary of the current status of Applicant's delinquent accounts:

SOR ¶ 1.a, \$299 medical collection account: Applicant testified that his health insurance should have paid this debt. He is pursuing the matter through his insurance company. (Tr. 75-76)

SOR ¶ 1.b, \$250 medical collection account: Applicant testified that his health insurance company should have paid this debt. He is pursuing the matter through his insurance company. (Tr. 75-76)

SOR ¶ 1.c, \$1,449 collection account: In October 2011, Applicant agreed to pay the collection company \$30 a month towards this collection account. The current balance on the account is \$1,509.32. The first payment was due on October 13, 2011. Payments are due on the 16th of each month. Applicant testified that he will make payments for six months. Then he will negotiate a higher payment with the collection agency. No documents were provided verifying that he made the payments. (Tr. 77; AE B at 5)

SOR ¶ 1.d, \$6,643 collection account: In October 2011, Applicant agreed to pay the collection company \$50 a month towards this collection account. The current balance on the account is \$6,413.16. Payments are due on the 16th of each month.

Applicant testified that he has been making payments for quite some time towards this account. No documents were provided verifying that he is making the agreed payments. (Tr. 77-78; AE B at 2-3)

SOR ¶ 1.e, \$183 cell phone collection account: Applicant is in the process of attempting to contact the creditor to make payment arrangements. (Tr. 78)

SOR ¶ 1.f, \$14,338 car repossession collection account: Applicant testified he is working with the company to negotiate a settlement. Status of debt at the close of the record is unresolved. (Tr. 79-80)

SOR ¶ 1.g, \$315 collection account: Applicant testified that this is resolved. He provided the initial payment agreement. On March 25, 2011, he agreed to pay three \$100 payments on March 18, 2011, April 1, 2011, and April 15, 2011. He did not provide proof that he made these payments. (Tr. 78; AE D)

SOR ¶ 1.h, \$307 checking account collection account: The debt was paid on March 15, 2011. (Tr. 78; AE C)

SOR ¶ 1.i, \$202 cell phone collection account: Applicant is in the process of making payment arrangements on this account. Status of debt at the close of the record is unresolved. (Tr. 78)

When Applicant responded to financial interrogatories on September 23, 2010, he provided a personal financial statement. He listed his net monthly salary as \$2,830.52. His fiancée's net monthly salary was \$2,400. Combined their net monthly income is \$5,230. His expenses include: rent \$1,100, groceries \$800, clothing \$100, utilities \$750, car expenses \$1,000, medical \$40, child support and daycare \$750 and miscellaneous \$400. His total monthly expenses were \$4,640.54. His total monthly debt payments were \$284. Applicant had \$305 left over each month after expenses. During the hearing he testified that he is current on his federal and state taxes. (Tr. 108; Gov 2 at 3)

During the hearing, Applicant's fiancée testified that she handles the finances. She believes that their finances are in good shape. Applicant cleared up his driving record and paid his parking tickets. He is current on his student loan payments. Their net monthly income is currently \$5,500. Their monthly expenses include: rent \$1,120, utilities \$600, \$580 car payment, \$270 tuition for daughter's school, diapers \$100. (Tr. 50 – 65)

Personal Conduct

Applicant's criminal history and drug use are cross-alleged under the personal conduct concern. In addition, in October 2005, Applicant was charged with driving a motor vehicle with no license plates and an expired registration. In September 2006, he

was charged with operating a motor vehicle with a suspended license. (Gov 3 at 6) Applicant presented proof that his traffic violations are resolved. (AE F)

Whole-Person Factors

Applicant's fiancée testified during the hearing. She has known him for eight years. They met at work. They have been together for seven years and have lived together for five years. They set a wedding date for June 9, 2012. She is aware of Applicant's criminal history and drug abuse. He has gone from being lost to setting an example. He is a good person and an amazing father. He is her best friend. He no longer associates with his past friends and they are active in their church. The church is a steady influence in their lives. (Tr. 46-56; AE A at 2)

Applicant's friend and personal representative testified on his behalf. He is a practicing attorney. He is a member of Narcotics Anonymous (NA) and a recovering drug addict. He has been clean for seven years. He met Applicant when he entered the NA program in 2006. He got to know Applicant as a very genuine and caring person. Applicant is determined to stay clean. Members of NA work diligently on changing their lives and character. He sees Applicant on a regular basis and has observed him working the steps. Applicant has also helped him relocate his law practice. Applicant helped him repair and adapt the computers in his law office. He sees Applicant every week at NA meetings. He is not the same person and has changed his life. Addicts have to want to get clean and it takes work. You have to work the program. He believes Applicant works the program. In 2008, he attempted to help Applicant expunge his criminal record. He was advised Applicant would have to wait longer because of the seriousness of his crimes. Ten years have passed and Applicant is now in the process of applying to expunge his criminal record. (Tr. 14-24; AE A at 5)

Applicant's NA sponsor testified during the hearing. He has been a member of NA for 25 years. He has known Applicant for five years. He helps Applicant work the 12 steps. Applicant's transformation from who he was when he entered the program to who he is today is "miraculous." Applicant recently celebrated five years of sobriety. His sponsor states that Applicant is a "poster child" for NA. In a letter dated November 17, 2011, Applicant's sponsor notes that he has watched Applicant "transition to a responsible member of Narcotics Anonymous and society." He worked very hard to accomplish an amazing growth. Applicant is a loving, devoted husband and father of three children. He has successfully maintained a job to support his family for almost five years. He helps with Spanish speaking members of NA on the phone line. He also volunteers to help others with their computer challenges when he has spare time. He is always willing and ready to assist whenever needed. He strongly trusts Applicant. (Tr. 33-42; AE A at 1, 3)

Applicant's regional manager wrote a letter on Applicant's behalf. He highly recommends Applicant for a security clearance. He notes Applicant can work independently and follows through to ensure the job gets done. He is flexible, reliable, and trustworthy. Applicant has consistently continued his education and has grown

professionally in the company. Applicant is a tremendous asset to the company and has his highest recommendation. (AE A at 4)

Applicant provided favorable performance reviews from 2010 and 2011. He became a Microsoft Certified Systems Engineer on December 30, 2009. (AE G)

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the 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 commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

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).

Analysis

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 disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition AG ¶19(a) (an inability or unwillingness to satisfy debts); and AG ¶19(c), (a history of not meeting financial obligations) apply to Applicant’s case. The SOR alleges and the Government proved by substantial evidence that Applicant has nine delinquent debts, an approximate total balance of \$23,986.

The Government’s substantial evidence and Applicant’s own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept, 22, 2005)).

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Financial Considerations Mitigating Condition 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) is not applicable. The majority of his delinquent accounts remain unresolved. While Applicant maintained that several of his debts are resolved, he did not provide proof that the debts were paid or resolved. (SOR ¶¶ 1.a, 1.b, 1.h) Proof was provided that he paid the debt alleged in SOR ¶ 1.g. He recently entered into payment agreements for the debts alleged in SOR ¶¶ 1.c and 1.d. It is too soon to conclude that he will follow the terms of the repayment agreements. He testified that debt alleged in SOR ¶ 1.h was resolved. He provided a copy of the repayment agreement, but no proof that the debt was paid in full. The

remaining accounts (SOR ¶¶ 1.e, 1.f, and 1.i) are not resolved. Questions remain about Applicant's reliability, trustworthiness, and good judgment based on his financial situation.

AG ¶ 20(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) does not apply. While Applicant has several periods of unemployment – some of the periods of unemployment occurred during the period that he was still using heroin. This was a self-induced problem as opposed to a circumstance beyond his control. While Applicant is beginning to resolve several of his accounts, several of his accounts remain unresolved. Considering that the balances on six of the delinquent debts were \$315 or less, Applicant could easily have resolved these accounts between the time he was interviewed in conjunction with his background investigation in September 2010 and the date of the hearing on November 17, 2011.

AG ¶ 20(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) does not apply. Applicant has not attended financial counseling. Applicant has several unresolved delinquent accounts. While he testified that he was in the process of resolving the accounts, he did not provide evidence verifying the steps that he has taken to resolve each account. It is unlikely that his financial situation will be resolved in the near future.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies with respect to the debt alleged in SOR ¶ 1.g. It may apply with respect to SOR ¶ 1.h, but Applicant did not provide documentation verifying the debt was resolved. He recently entered into repayment agreements with the debts alleged in SOR ¶¶ 1.c and 1.d. It is too recent to determine whether Applicant will follow through with the agreed upon payments. He also provided no proof to corroborate his assertions of payments even though the record was held open to allow him the opportunity to do so. While he testified that he is resolving the remaining accounts, a promise to pay in the future is not sufficient to demonstrate a good-faith effort towards resolving one's debts.

Applicant has not mitigated the concerns raised under Guideline F.

Guideline J, Criminal Conduct

The security concern raised under the Criminal Conduct guideline is set forth in ¶ 30 of the AG:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

There are three Criminal Conduct Disqualifying Conditions which apply to Applicant's case:

AG ¶ 31(a) (a single serious crime or multiple lesser offenses);

AG ¶ 31(c) (allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted); and

AG ¶ 31(d) (conviction in a Federal or State court, including a court-martial of a crime, sentenced to imprisonment for a term exceeding one year and incarcerated as a result of that sentence for not less than a year).

Applicant was convicted of serious offenses in October 1995 and January 1997. He served three years and three months in prison for the Grand Theft Auto conviction in 1997. Marijuana possession charges in November 1996 and August 2000 are also considered in Applicant's criminal history. His illegal drug use from age 18 to 2005 is also considered in his criminal history. Although Applicant's last criminal arrest occurred in August 2000, he continued to abuse illegal drugs until 2005.

The following Criminal Conduct Mitigating Conditions are relevant to Applicant's case:

AG ¶ 32(a) (so much time has elapsed since the criminal behavior happened, or it happened under such circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment); and

AG ¶ 33(d) (there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement).

Considering his history of criminal conduct, Applicant has a substantial burden to overcome the concerns raised under criminal conduct. While his past serious criminal conduct raises cause for concern, his criminal conduct ended in 2005 when he stopped using drugs. He has had no arrests since 2000. It has been six years since he has committed a criminal offense (i.e. illegal drug use). He demonstrated that he is a responsible citizen. He has worked for the same company for six years and gets favorable performance reviews. He is in a committed relationship and is a responsible family man. He actively works on maintaining his sobriety. Both AG ¶ 32(a) and ¶ 32(d) apply to Applicant's cases. When the illegal drug use ceased, the criminal conduct ceased. Criminal conduct is unlikely to recur. Applicant has demonstrated that he is successfully rehabilitated.

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.

The guideline notes several disqualifying conditions that could raise security concerns. The following Drug Involvement Disqualifying Conditions are relevant:

AG ¶ 25(a) (any drug abuse); and

AG ¶ 25(c) (illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia).

Applicant admits to a 14-year history of illegal drug use. At age 14, he began to use marijuana. At 17, he began to use cocaine. He began to use heroin while in prison. He continued to use heroin after he was released from prison in 2000 until 2005. He admits to being a drug addict.

The guideline also includes examples of conditions that could mitigate security concerns arising from drug involvement. I find two apply to Applicant's case.

AG ¶ 26(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); and

AG ¶ 26(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; (4) a signed statement of intent with automatic revocation of clearance for any violation).

Applicant has been drug free for over five years. The testimony of his fiancée, his friend/personal representative, and his sponsor verify that he has been clean since 2005. They also attested to the fact that he actively works the NA program. While his history of illegal drug use was quite lengthy, his five-plus years of sobriety reinforce that his illegal drug use no longer casts doubt on his current reliability, trustworthiness, or good judgment. Applicant no longer associates with his drug-using associates and contacts. He is an active member of NA and is proactive in taking steps to insure that he remains drug free. He has been drug free for five years.

The drug involvement concerns are mitigated.

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.

Personal Conduct concerns are raised because of Applicant's criminal history, history of drug abuse, and traffic offenses. The following disqualifying conditions are raised under personal conduct:

AG ¶ 16(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); and

AG ¶ 16(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...).

The following Personal Conduct Mitigating Conditions apply to Applicant's case:

AG ¶ 17(c) (the offense is so minor, or so much time has passed, or the behavior 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(d) (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); and

AG ¶ 17(e) (the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress).

While Applicant's history of criminal conduct, drug abuse, and traffic offenses raises concerns about his reliability and trustworthiness, he has made great progress in turning his life around. Once he became serious about stopping his drug abuse, his life became more manageable. He is active in NA and works the 12-step program to maintain his sobriety. He has been drug free since 2005. There is no evidence of criminal conduct since that time. While some of his offenses were very serious, he appears to have rehabilitated himself. He is now a mature, responsible family man. He fully disclosed his unfavorable history during his background investigation. He no longer associates with members of his former gang.

Security concerns raised under Personal Conduct 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):

the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant mitigated concerns about his past criminal history, drug abuse and personal conduct. However, questions remain under financial considerations. Applicant has several unresolved debts which creates doubts about his ability to protect classified information. In cases where there is doubt, the doubts must be ruled in favor of national security. Applicant has resolved some of his debts, but did he not show a specific plan for resolving his remaining debts. A promise to pay in the future is not sufficient to demonstrate a good-faith effort to resolve debts. At this time, Applicant has not met his substantial burden of proof to mitigate the concerns raised under financial considerations.

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 -1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h - 1.i:	Against Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraphs 2.a - 2.f:	For Applicant
Paragraph 3, Guideline H:	FOR APPLICANT
Subparagraphs 3.a - 3.h:	For Applicant
Paragraph 4, Guideline E:	AGAINST APPLICANT
Subparagraphs 4.a – 4.d:	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.

ERIN C. HOGAN
Administrative Judge