



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 15-00536

**Appearances**

For Government: Robert J. Kilmartin, Esquire, Department Counsel

For Applicant: *Pro se*

04/28/2017

**Decision**

GALES, Robert Robinson, Administrative Judge:

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

**Statement of the Case**

On May 22, 2014, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.<sup>1</sup> On September 14, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him, under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The

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<sup>1</sup> Item 2 (e-QIP, dated May 22, 2014).

SOR alleged security concerns under Guidelines H (Drug Involvement), J (Criminal Conduct), E (Personal Conduct), and F (Financial Considerations) and detailed reasons why the DOD CAF was unable to make an affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

It is unclear when Applicant received the SOR as there is no receipt in the case file. In a statement notarized December 11, 2015, Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was provided to Applicant on April 27, 2016, and he was afforded an opportunity, within a period of 30 days after receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Guidelines applicable to his case. Applicant received the FORM on May 4, 2016. A response was due by June 3, 2016. As of April 6, 2017, the Defense Office of Hearings and Appeals (DOHA) had not received a response to the FORM. The case was assigned to me on April 6, 2017.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted all of the factual allegations pertaining to drug involvement (§§ 1.a. through 1.d.) and criminal conduct (§§ 2.a. through 2.d.), as well as most of the factual allegations pertaining to financial considerations (§§ 4.a., 4.b., and 4.d. through 4.f.) in the SOR. He failed to address the allegations pertaining to personal conduct. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 35-year-old employee of a defense contractor. He has been serving with his current employer since May 2001, initially as a custodian (May 2001 until 2008) and currently as a utility helper. He is a 2000 high school graduate. He has never served with the U.S. military. He was granted a secret security clearance in May 2001, with subsequent reinvestigations, with his most recent renewal taking place in February 2009. He has never been married.

### **Criminal Conduct, Drug Involvement, and Personal Conduct<sup>2</sup>**

Applicant has a substantial history of conduct as a justice-involved individual, commencing in July 2007, and continuing through at least June 2013. Included in that history are various incidents, mostly fueled by his consumption of alcohol and use and possession of illegal drugs, which led to arrests and charges. The SOR alleged five such incidents:

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<sup>2</sup> General source information pertaining to Applicant's criminal conduct and drug involvement discussed below can be found in the following exhibits: Item 2, *supra* note 1; Item 3 (Personal Subject Interview, dated June 12, 2014); Item 6 (Federal Bureau of Investigation (FBI) Identification Record, dated October 12, 2013); and Item 1 (Applicant's Answer to the SOR, dated December 11, 2015).

(SOR ¶¶ 2.d. and 3.b.): In July 2004, Applicant was arrested and charged (1) with driving under the influence (DUI) liquor, drugs, vapors, combo – a misdemeanor; and (2) DUI with a blood alcohol content (BAC) of .08 or more – a misdemeanor. He was found guilty of charge (1). He was sentenced to a fine and ten days in jail. The remaining charge was dismissed.<sup>3</sup>

(SOR ¶¶ 2.c. and 3.b.): In September 2007, after consuming seven beers and two to three shots of liquor at bars during a four to five hour period, Applicant was arrested and charged with extreme DUI, BAC .15 or more – a misdemeanor. He was found guilty of the charge. He was sentenced to a \$5,000 fine, jail work-release for 180 days, probation for 24 months, and his operator's license was revoked for one year. He subsequently attended numerous sessions of an alcohol education program in 2009.<sup>4</sup>

(SOR ¶¶ 2.b. and 3.b.): In December 2012, Applicant was arrested and charged with violation of promise to appear – a misdemeanor. The charge was subsequently dismissed.<sup>5</sup>

(SOR ¶¶ 2.a. and 3.b.): In June 2013, Applicant was arrested and charged with failure to appear 1<sup>st</sup> degree – a felony. The charge was subsequently dismissed.<sup>6</sup>

(SOR ¶¶ 1.c. and 3.a.): In June 2013, Applicant was arrested and charged with (1) narcotic drug possession/use – a felony; and (2) drug paraphernalia possession/use – a felony. At the time, he was in possession of approximately one gram of cocaine. Charge (1) was reduced to narcotic drug violation – a felony, and charge (2) was reduced to drug paraphernalia violation – a felony. Applicant was found guilty of both reduced charges and sentenced to 18 months' probation, ordered to attend a drug education program, and fined \$2,000. After nine months of probation, Applicant chose to spend three months in the county jail in an effort to return to work earlier than originally anticipated. He attended the drug education program from October 2012 until February 2013.<sup>7</sup>

Applicant has a lengthy history of substance abuse, with his preferred substance being cocaine, and to a much lesser degree, marijuana. He initially experimented with cocaine as a high school sophomore, in about 1998, when out of curiosity at a party, he snorted one "line" of cocaine that was furnished to him by a friend. During the period between his sophomore and senior years, he purchased cocaine from a classmate (whom he refused to identify), and again snorted a "line" of cocaine. He did not resume any relationship with cocaine until October 2012.<sup>8</sup> In October 2000, out of curiosity at a party, he took one and one-half "hits" from a marijuana cigarette. It made him feel paranoid, and he did not enjoy it, so he never used it again.<sup>9</sup>

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<sup>3</sup> Item 6, *supra* note 2, at 2; Item 1, *supra* note 2, at 2.

<sup>4</sup> Item 6, *supra* note 2, at 2; Item 3, *supra* note 2, at 6; Item 1, *supra* note 2, at 2.

<sup>5</sup> Item 6, *supra* note 2, at 3; Item 1, *supra* note 2, at 2.

<sup>6</sup> Item 6, *supra* note 2, at 3; Item 1, *supra* note 2, at 2.

<sup>7</sup> Item 6, *supra* note 2, at 2; Item 3, *supra* note 2, at 5; Item 1, *supra* note 2, at 2.

<sup>8</sup> Item 3, *supra* note 2, at 4.

(SOR ¶¶ 1.a., 1.b., 1.d., 3.a., 3.b., and 3.d.): Applicant contends that he is afflicted with a debilitating disease, and because of his condition, he was placed on medical or sick leave on several occasions. He was on sick leave and very depressed over his condition when friends (whom he refused to identify) started furnishing him cocaine. During the period from October 2012 until at least April 2013, Applicant possessed and used cocaine on multiple occasions, estimated by Applicant to be five occasions. Although he had previously been granted a security clearance, he did not believe he would be able to return to work, so he continued to snort up to two lines on each occasion. To his surprise, he was recalled to work in April 2013 (not February 2013, as alleged in the SOR). The week he returned, he was selected for a random urinalysis. Because he had used cocaine only two days before the test, the results came up positive for cocaine. He was suspended, and may have been terminated from his job, but with the assistance of his union representative, he was recalled, as the incident was treated as a first offense.<sup>10</sup> A week after his reinstatement, Applicant again went on medical leave, a status in which he remained until May 2014. Since his return to work, Applicant was administered two random urinalyses, both of which came up clean.<sup>11</sup>

### **Financial Considerations<sup>12</sup>**

Applicant's financial difficulties arose in November 2007 when he stopped making payments on his truck loan following his September 2007 DUI. The vehicle was repossessed in January 2008. It was sold at auction, leaving a \$10,000 deficiency. Subsequently, during a period in which he was on medical leave, Applicant's health insurance coverage purportedly lapsed, and he was not aware of the lapse. Other accounts became delinquent, either because he had insufficient funds to make his monthly payments or because he simply forgot about them. During his interview with an investigator from the U.S. Office of Personnel Management (OPM) in June 2014, Applicant contended that he is meeting all of his financial obligations.<sup>13</sup>

The SOR identified six purportedly delinquent debts that had been placed for collection, as reflected by his June 2014 credit report, his December 2014 credit report, or his e-QIP. Those debts, totaling approximately \$11,811, and their respective current status, according to the credit reports, other evidence submitted by the Government and Applicant, and Applicant's comments regarding same, are described below:

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<sup>9</sup> Item 3, *supra* note 2, at 5.

<sup>10</sup> Item 3, *supra* note 2, at 4.

<sup>11</sup> Item 3, *supra* note 2, at 4.

<sup>12</sup> General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 2, *supra* note 1; Item 5 (Combined Experian, TransUnion, and Equifax Credit Report, dated June 5, 2014); Item 4 (Equifax Credit Report, dated December 31, 2014); and Item 3, *supra* note 2.

<sup>13</sup> Item 3, *supra* note 2, at 9.

There are three medical debts that were placed for collection in the amounts of \$1,140 (SOR ¶ 4.a.), \$62 (SOR ¶ 4.d.), and \$210 (SOR ¶ 4.f.) that remain unpaid.<sup>14</sup> There is an Internet account with an unpaid balance of \$304 that was placed for collection (SOR ¶ 4.b.), and it remains unpaid.<sup>15</sup> There is an electric utility account with an unpaid balance of \$95 that was placed for collection (SOR ¶ 4.c.),<sup>16</sup> and although Applicant contends that he paid it,<sup>17</sup> he offered no documentation, such as a receipt, cancelled check, or account register, to support his contention. There is the aforementioned \$14,000 credit union vehicle loan upon which Applicant ceased making monthly payments in November 2007 that was placed for collection and the vehicle was repossessed. After the repossession and subsequent auction, Applicant was responsible for the remaining \$10,000 deficiency, an amount that remains unpaid (SOR ¶ 4.e.).<sup>18</sup>

There is no evidence to indicate that Applicant ever received financial counseling. Furthermore, Applicant did not explain his failure to contact his creditors since he was interviewed in June 2014, nearly three years ago, in an effort to resolve the above accounts, all of which remain unresolved. Because he failed to submit any information pertaining to his current finances, including monthly budget, income, expenses, savings, etc., it is impossible to assess the status of his finances to determine if his financial problems are under control

## 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.”<sup>19</sup> As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”<sup>20</sup>

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

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<sup>14</sup> Item 5, *supra* note 2, at 8-9; Item 4, *supra* note 2, at 2; Item 3, *supra* note 2, at 8; Item 1, *supra* note 2, at 2-3.

<sup>15</sup> Item 5, *supra* note 2, at 8; Item 4, *supra* note 2, at 2; Item 3, *supra* note 2, at 8; Item 1, *supra* note 2, at 2.

<sup>16</sup> Item 5, *supra* note 2, at 8; Item 4, *supra* note 2, at 2; Item 3, *supra* note 2, at 8.

<sup>17</sup> Item 1, *supra* note 2, at 3.

<sup>18</sup> Item 2, *supra* note 1, at 29; Item 3, *supra* note 2, at 7-8.

<sup>19</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

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

conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."<sup>21</sup> The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.<sup>22</sup>

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials."<sup>23</sup>

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."<sup>24</sup> Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In

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<sup>21</sup> "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>22</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>23</sup> *Egan*, 484 U.S. at 531

<sup>24</sup> See Exec. Or. 10865 § 7.

reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

## **Analysis**

### **Guideline H, Drug Involvement**

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

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

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

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

(2) inhalants and other similar substances;

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

The guideline notes several conditions that could raise security concerns. Under AG ¶ 25(a), “any drug abuse (see above definition),” is potentially disqualifying. In addition, under AG ¶ 25(b), “testing positive for illegal drug use” may raise security concerns. Similarly, AG ¶ 25(c) may apply where there is “illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.” In addition, “any illegal drug use after being granted a security clearance” may raise security concerns under AG ¶ 25(g).

Applicant's multi-year history of substance abuse involved repeated use and possession of cocaine, some isolated purchases of cocaine, and the possession of drug paraphernalia. He used cocaine after being granted a security clearance. He was arrested in 2012 for drug-related charges and convicted of reduced drug-related charges. He attended a court-mandated drug education program. Nevertheless, in 2013, after participating in a random urinalysis, the test registered positive for the presence of cocaine. AG ¶¶ 25(a), 25(b), 25(c), and 25(g) have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from drug involvement. Under AG ¶ 26(a), the disqualifying conditions

may be mitigated where “the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment.” Under AG ¶ 26(b), drug involvement concerns may also be mitigated where there is

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

Also, the “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,” may apply under AG ¶ 26(d).

None of the mitigating conditions apply. While Applicant’s most recent use of an illegal substance (cocaine) purportedly occurred in April 2013 – four years ago – his purchase, possession, and use of cocaine took place initially in his high school years, but more importantly and recently from October 2012 until at least April 2013, after he had been granted a security clearance. He continued using cocaine following his 2012 drug-related arrest and conviction, and even after he had attended the court-mandated drug education program. Applicant’s purported abstinence from cocaine use is viewed favorably, and he should be encouraged to continue it. However, Applicant has not furnished a reasonable basis for ignoring federal and state drug laws and policy, but instead resorted to cocaine use because he was supposedly depressed over an undocumented medical condition. In addition, because of his reluctance in identifying the sources of his cocaine supply, it is impossible to determine with any degree of certainty that Applicant has disassociated from drug-using associates and contacts. In the absence of positive character evidence, all of the above factors continue to cast doubt on Applicant’s reliability, trustworthiness, or good judgment.

## **Guideline J, Criminal Conduct**

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30: “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.”

The guideline notes several conditions that could raise security concerns. Under AG ¶ 31(a), “a single serious crime or multiple lesser offenses” is potentially disqualifying. Similarly, under AG ¶ 31(c), if there is an “allegation of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted,” security concerns may be raised. Applicant’s history of alleged criminal conduct, covering a decade, consists of five incidents involving criminal charges, arrests, convictions, and dismissals, for a variety of actions. In addition, there was his repeated use of cocaine. AG ¶¶ 31(a) and 31(c) have been established.



The guidelines also include examples of conditions that could mitigate security concerns arising from criminal conduct. Under AG ¶ 32(a), the disqualifying condition may be mitigated where “so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.” Similarly, AG ¶ 32(d) may apply when “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.”

None of the mitigating conditions apply. Applicant's five alleged incidents of criminal conduct involving arrests and charges, as well as his repeated use and possession of cocaine, occurred over a decade, with the most recent incident (the use of cocaine) occurring in April 2013. In reality, but not alleged in the SOR, Applicant's previous purchase, possession, and use of cocaine occurred even before his initial arrest in 2004. As a result of his conduct, Applicant went to jail and to court; he underwent two court-mandated education programs; he paid fines; he lost his operator's license; and he was placed on probation. Regardless of the disposition of the charges or the punishment ordered, Applicant continued his criminal behavior. The 2012 conviction for drug-related charges did not dissuade him from continuing to use cocaine until he was caught by a random drug urinalysis in April 2013.

While there is evidence that certain charges have been dismissed or otherwise not prosecuted, those dismissals and non-prosecutions do not, without substantially more, necessarily reflect that Applicant did not commit the individual offenses charged. Generally, the passage of time without recurrence of additional criminal activity can be construed as some evidence of successful rehabilitation. However, with respect to Applicant's misconduct, the criminal activities have continued over time. While a person should not be held forever accountable for misconduct from the past, in this instance the past is relatively recent, and the concerns about future criminal conduct are continuing.

### **Guideline E, Personal Conduct**

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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

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

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

Under AG ¶ 16(e), it is also potentially disqualifying if there is

personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing. . . .

Applicant's five arrests between 2004 and 2013 involved high-risk and illegal behavior that got him into trouble with the police and the courts. His repeated use of cocaine after he had been granted a security clearance reflects a conscious disregard for his fiduciary responsibilities to avoid such situations. Considering Applicant's history of questionable judgment, untrustworthiness, unreliability, and unwillingness to comply with rules and regulations, AG ¶¶ 16(c) and 16(e) have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct, but none of those mitigating conditions apply. His repeated conduct shows an absence of law, rule, and fiduciary compliance that is relatively recent and serious. In the absence of some significant emotional and attitudinal changes by Applicant, it appears that such overall behavior is likely to recur.

## **Guideline F, Financial Considerations**

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

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. . . .

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly, under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant's financial problems initially arose in November 2007 when he stopped making payments on a vehicle loan. The vehicle was repossessed. He ignored other accounts that became delinquent, and they were placed for collection. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment.” In addition, under AG ¶ 20(b), financial security concerns may be mitigated where “the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances.” Evidence that “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” is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”<sup>25</sup>

None of the mitigating conditions apply. Because of the nature, frequency, and recency of Applicant’s continuing financial difficulties, I am unable to conclude that it occurred “so long ago” or “was so infrequent.” While Applicant commented on his medical condition (but failed to submit documentation to support the presence of such a condition), and noted his inability to drive because he lost his driving privileges following a DUI conviction, his only reference to his bills was that he could not pay them or he forgot about them. Applicant offered little evidence of a good-faith effort to resolve any of his debts. Without substantially more, the loss of driving privileges does not equate to a justification for not paying bills. In the absence of any financial information from him regarding the specific reasons for his inability or failure to pay his debts, and without attributing any specific factors to that inability, I am unable to determine if his financial problems were caused by conditions that were largely beyond his control. There is no evidence of Applicant ever receiving financial counseling. In addition, in the absence of information regarding Applicant’s current finances, it is impossible to conclude that his financial problems are under control. There is little evidence to indicate efforts to contact his creditors to arrange repayment plans, even after the OPM investigator interviewed him in June 2014, nearly three years ago. Applicant appears to have acted imprudently and

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<sup>25</sup> The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

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

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

irresponsibly. Applicant's actions, or inactions, under the circumstances confronting him, continue to cast doubt on his current reliability, trustworthiness, and good judgment.<sup>26</sup>

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.<sup>27</sup>

There is some evidence in favor of mitigating Applicant's conduct. He has been with his current employer since May 2001. He was initially granted a secret security clearance in May 2001, with subsequent reinvestigations, and his most recent renewal occurred in February 2009. He has abstained from further cocaine abuse since April 2013.

The disqualifying evidence under the whole-person concept is more substantial. Applicant is a justice-involved individual whose history of criminal conduct took place over a multi-year period. Included in that history are various incidents that led to criminal charges, arrests, convictions, and dismissals, for a variety of actions. He was jailed, fined, placed on probation, required to attend education programs, and he lost his driving privileges for one year. He repeatedly used cocaine even after he had been granted a security clearance. He does not pay his bills. The combination of Applicant's actions and explanations cast doubt on Applicant's reliability, trustworthiness, and good judgment. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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<sup>26</sup> See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

<sup>27</sup> See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

### **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:	AGAINST APPLICANT
Subparagraphs 1.a. through 1.d.:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a. through 2.e.:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a. and 3.b.:	Against Applicant
Paragraph 4, Guideline F:	AGAINST APPLICANT
Subparagraphs 4.a. through 4.f.:	Against Applicant

### **Conclusion**

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

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ROBERT ROBINSON GALES  
Administrative Judge