



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-01845

Appearances

For Government: Erin P. Thompson, Esquire, Department Counsel

For Applicant: *Pro se*

11/17/2017

Decision

GALES, Robert Robinson, Administrative Judge:

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

Statement of the Case

On May 5, 2014, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application. On July 30, 2016, he submitted another e-QIP. On an unspecified date before October 27, 2016, the Defense Office of Hearings and Appeals (DOHA) issued him a set of interrogatories. Applicant responded to those interrogatories on October 27, 2016. On December 7, 2016, 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) applicable to all adjudications and

other determinations made under the Directive, effective September 1, 2006.¹ The SOR alleged security concerns under Guideline F (Financial Considerations), Guideline H (Drug Involvement and Substance Misuse), and Guideline E (Personal Conduct), and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

It is unclear when Applicant received the SOR as there is no receipt in the case file. On December 15, 2016, he responded to the SOR 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 mailed to Applicant by DOHA on February 8, 2017, 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 previous Adjudicative Guidelines applicable to his case. Applicant received the FORM on February 14, 2017. Applicant's response was due on March 16, 2017. Applicant failed to submit any response. The case was assigned to me on October 1, 2017.

Findings of Fact

In his Answer to the SOR, Applicant admitted, without comments, all of the factual allegations pertaining to financial considerations (§§ 1.a. through 1.h.); drug involvement and substance misuse (§§ 2.a. through 2.c.); and personal conduct (§§ 3.a. through 3.f.) of the SOR. Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 30-year-old employee of a defense contractor. He has served as a help desk technician since July 2016. Applicant previously had several relatively diverse short-term full-time and part-time positions with various employers, as well as a number of periods of unemployment. He was unemployed from October 2011 until September 2012; November 2013 until May 2014; and April 2015 until July 2016. He is a 2006 high school graduate. He received an Associate's degree in 2008, and a Bachelor's degree in 2011. He has never served with the U.S. military. Applicant has never been married. He has no children.

¹ Effective June 8, 2017, by Directive 4 of the Security Executive Agent (SEAD 4), dated December 10, 2016, *National Security Adjudicative Guidelines* (AG) for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position, were established to supersede all previously issued national security adjudicative criteria or guidelines. Accordingly, those guidelines previously implemented on September 1, 2006, under which this security clearance review case was initiated, no longer apply. In comparing the two versions, there is no substantial difference that might have a negative effect on Applicant in this case.

Financial Considerations²

It is unclear when Applicant first started to experience financial difficulties, or what specific factors (other than Applicant's observation that the required monthly payments became too high) may have led to those difficulties. He acknowledged having been unemployed on several occasions, but he claimed that during those periods of unemployment he was generally financially supported by his mother or by his own savings. Neither of Applicant's e-QIPs lists any financial delinquencies. Nevertheless, a review of his August 2016 credit report reveals a number of delinquent accounts that were past due, placed for collection, or charged off.

The SOR identified eight purportedly delinquent debts, including seven student loans with a variety of creditors, and one cellular telephone account. Those debts total approximately \$80,342. The student loans were all cosigned by Applicant's grandfather. Five of the student loans were charged off: a loan with a high credit of \$33,384 that had a past-due balance of \$31,119 (SOR ¶ 1.a.); a loan with a high credit of \$26,822 that had a past-due balance of \$25,273 (SOR ¶ 1.b.); a loan with a high credit of \$10,359 that had a past-due balance of \$9,873 (SOR ¶ 1.c.); a loan with a high credit of \$5,014 that had a past-due balance of \$4,866 (SOR ¶ 1.d.); and a loan with a high credit of \$3,780 that had a past-due balance of \$3,684 (SOR ¶ 1.f.). Two of the student loans are merely past due: a loan with a high credit of \$7,644 that has a past-due balance of \$345 and a remaining balance of \$4,824 (SOR ¶ 1.e.); and a loan with a high credit of \$2,594 that has a past-due and remaining balance of \$158 (SOR ¶ 1.h.). He also has a cellular telephone account with an outstanding balance of \$546 (SOR ¶ 1.g.).

Applicant acknowledged that he has received letters and collection calls from creditors or collection agents. He contends that he is making monthly payments on the accounts, but acknowledged that the amounts paid are less than the required amounts. He has not made or complied with any agreements to pay. Applicant said that he intends to pay the accounts in monthly payments that he can afford. Applicant failed to specify the amounts: (1) he has paid his creditors; (2) he is currently paying his creditors; or (3) the amounts that he intends to pay his creditors. Applicant failed to submit documentation, such as cancelled checks, check registers, online account documents, or receipts, to support his contentions that he is making payments to his creditors. Applicant acknowledged that he has never received financial counseling.

Applicant failed to submit a Personal Financial Statement to reflect his net monthly income, normal monthly expenses, including debt payments, and a monthly remainder available for discretionary spending or savings. In the absence of such information, it remains unclear if Applicant's financial situation has improved, or if his finances are under control.

² General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 6 (Equifax Credit Report, dated August 8, 2016; Item 2 (Applicant's Answer to the SOR, dated December 15, 2016; Item 5 (Personal Subject Interview, dated July 10, 2014).

Drug Involvement and Substance Misuse

Neither of Applicant's e-QIPs lists any drug involvement and substance misuse by Applicant. However, Applicant is a substance abuser, and his choice of substances has been marijuana.³ He commenced using marijuana, usually by smoking a "joint" in 2005 - when he was about 18 years old - and he continued using it until at least January 2015. He generally smoked marijuana an average of two times per week with friends. He routinely purchased marijuana from friends whose names he could not recall.

Applicant acknowledged that he failed one employment-related drug test. He was also involved in two drug-related incidents with law enforcement authorities. In January 2008, he was stopped by the police for having a non-working light on his vehicle. The police officer noticed the odor of marijuana coming from the car, and following a search of the vehicle, he located less than one gram of marijuana. Applicant was arrested and charged with possession of marijuana. After being incarcerated overnight, he was released. He claimed his attorney managed to eventually get the charge dismissed. Applicant said that his motivation at the time was that he was young and that he had exercised bad judgment. He felt that there was no likelihood of a repeat of that type of behavior. The second incident occurred in February 2011. Applicant was a passenger in a car that was pulled over for a faulty headlight. Once again, the odor of marijuana came from the car. Following a search of the vehicle, a small amount of marijuana was found on Applicant. He was arrested for possession of marijuana. After spending nearly seven hours of incarceration, he was released. The public defender eventually was successful in getting the charge dismissed.

During his interview with an investigator from the U.S. Office of Personnel Management (OPM) in July 2014, Applicant said he stopped using marijuana in January 2014, and that he had no intention of using it in the future. However, in his response to the interrogatories in October 2016, Applicant admitted that he had continued using marijuana until January 2015. He offered no explanation as to why he continued using marijuana after January 2014, or why he stopped using marijuana in January 2015, or what his most recent intentions might be regarding his future use of marijuana.

Personal Conduct

In May 2014, when Applicant completed his first e-QIP, he responded to certain questions pertaining to his financial record, police record, and the illegal use of drugs or drug activity.

(SOR ¶ 3.d.): The questions in Section 26 – Financial Record: Delinquency Involving Routine Accounts – asked if, in the past seven years, he had: defaulted on any type of loan; bills or debts turned over to a collection agency; any account or credit card

³ Schedules I, II, III, IV, and V, as referred to in the Controlled Substances Act are contained in 21 U.S.C. § 812(c). Marijuana is a Schedule (Sch.) I controlled substance. See Drug Enforcement Administration listing at http://www.deadiversion.usdoj.gov/21cfr/cfr/1308/1308_11.htm. See also *Gonzales v. Raish*, 545 U.S. 1 (2005) (discussing placement of marijuana on Sch. I).

suspended, charged off, or cancelled for failing to pay as agreed; and been over 120 days delinquent on any debt not previously entered. Another question asked if he is currently over 120 days delinquent on any debt. Applicant answered “no” to all those questions. He certified that the responses were “true, complete, and correct” to the best of his knowledge and belief, but the responses to those questions were, in fact, false. He initially told the OPM investigator that he had no delinquent accounts, but after being confronted by the investigator, Applicant said he had not listed his financial delinquencies because he sends in a payment on the loan each month even though it is not the full required amount. In his Answer to the SOR, Applicant admitted that he had deliberately failed to disclose that his eight accounts were delinquent as set forth in the SOR.

(SOR ¶ 3.e.): The questions in Section 22 – Police Record – asked if, in the past seven years, he had been charged of a crime in any court; and if he had EVER been charged with an offense involving alcohol or drugs. Applicant answered “no” to both of those questions. He certified that the responses were “true, complete, and correct” to the best of his knowledge and belief, but the responses to those questions were, in fact, false. He initially told the OPM investigator that he had no arrests, drug-related or otherwise, but after being confronted by the investigator, Applicant said he had not listed his arrests because his attorney told him they had been removed from his record. In his Answer to the SOR, Applicant admitted that he had deliberately failed to disclose his 2008 and 2011 drug-related arrests as set forth in the SOR.

(SOR ¶ 3.f.): The question in Section 23 – Illegal Use of Drug Activity – asked if, in the last seven years, he had illegally used any drugs or controlled substances. Applicant answered “no” to the question. He certified that the response was “true, complete, and correct” to the best of his knowledge and belief, but the response to that question was, in fact, false. In his Answer to the SOR, Applicant admitted that he had deliberately failed to disclose his use of marijuana as set forth in the SOR.

In July 2016, when Applicant completed his second e-QIP, he again responded to certain questions pertaining to his financial record, police record, and the illegal use of drugs or drug activity.

(SOR ¶ 3.a.): The questions in Section 26 – Financial Record: Delinquency Involving Routine Accounts – asked if, in the past seven years, he had: defaulted on any type of loan; bills or debts turned over to a collection agency; any account or credit card suspended, charged off, or cancelled for failing to pay as agreed; and been over 120 days delinquent on any debt not previously entered. Another question asked if he is currently over 120 days delinquent on any debt. Applicant answered “no” to all those questions. He certified that the responses were “true, complete, and correct” to the best of his knowledge and belief, but the responses to those questions were, in fact, false. In his Answer to the SOR, Applicant admitted that he had deliberately failed to disclose that his eight accounts were delinquent as set forth in the SOR.

(SOR ¶ 3.b.): The questions in Section 22 – Police Record – asked if, in the past seven years, he had been charged of a crime in any court; and if he had EVER been charged with an offense involving alcohol or drugs. Applicant answered “no” to both of

those questions. He certified that the responses were “true, complete, and correct” to the best of his knowledge and belief, but the responses to those questions were, in fact, false. In his Answer to the SOR, Applicant admitted that he had deliberately failed to disclose his 2008 and 2011 drug-related arrests as set forth in the SOR.

(SOR ¶ 3.c.): The question in Section 23 – Illegal Use of Drug Activity – asked if, in the last seven years, he had illegally used any drugs or controlled substances. Applicant answered “no” to the question. He certified that the response was “true, complete, and correct” to the best of his knowledge and belief, but the response to that question was, in fact, false. In his Answer to the SOR, Applicant admitted that he had deliberately failed to disclose his use of marijuana as set forth in the SOR.

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.”⁴ 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.”⁵

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

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

In the decision-making process, facts must be established by “substantial evidence.”⁶ The Government initially has the burden of producing evidence to establish a

⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁵ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

⁶ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

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.⁷

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."⁸

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."⁹ Thus, nothing in this decision should be construed to suggest that I have based this decision on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline F, Financial Considerations

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

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other

⁷ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁸ *Egan*, 484 U.S. at 531.

⁹ See Exec. Or. 10865 § 7.

issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability to satisfy debts” is potentially disqualifying. In addition, AG ¶ 19(b) may apply if there is an “unwillingness to satisfy debts regardless of the ability to do so.” Similarly, under AG ¶ 19(c), “a history of not meeting financial obligations” may raise concerns. Applicant has eight delinquent debts, including seven student loans with a variety of creditors, and one cellular telephone account, totaling approximately \$80,342. AG ¶¶ 19(a), 19(b), and 19(c) have been established.

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.”¹⁰ Also, under AG ¶ 20(b), financial security concerns may be mitigated where “the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances.” Evidence that “the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and 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 and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.”¹¹

¹⁰ A debt that became delinquent several years ago is still considered recent because “an applicant’s ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions.” ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sep. 13, 2016)).

¹¹ 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. Jun. 4, 2001)).

None of the mitigating conditions apply. The nature, frequency, and recency of Applicant's continuing financial difficulties make it difficult to conclude that it occurred "so long ago" or "was so infrequent," or that it is "unlikely to recur." Applicant failed to identify any specific factor for his inability to continue making his normal monthly payments other than simply saying that he could not afford his monthly payments. Aside from Applicant's comments to the OPM investigator regarding his debts, there is no documentary evidence to support his claimed debt payments. Furthermore, Applicant's declared future intentions to pay the accounts in monthly payments that he can afford, is simply a hope for financial improvement, not a strategy for a financial plan.¹²

Clearance decisions are aimed at evaluating an applicant's judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The guidelines do not require an applicant to establish resolution of each and every debt alleged in the SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in an SOR be paid first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts one at a time. In this instance, there are no references to an overall plan, and there are lengthy periods of inactivity. There is no evidence of financial counseling. There is no evidence that Applicant's finances are under control.

Under the circumstances, Applicant has not acted responsibly by failing to address his delinquent accounts and by failing to initiate meaningful efforts to work with his creditors.¹³ He failed to submit documentation to support any efforts regarding his debts, especially related to his claimed payments. Applicant's actions, or relative inaction, under the circumstances casts substantial doubt on his current reliability, trustworthiness, and good judgment.¹⁴

Guideline H, Drug Involvement and Substance Abuse

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

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances

¹² The Appeal Board has indicated that promises to pay off delinquent debts in the future was not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sept. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)).

¹³ "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

¹⁴ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *Controlled substance* means any "controlled substance" as defined in 21 U.S.C. 802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

Furthermore, on October 25, 2014, the Director of National Intelligence (DNI) issued Memorandum ES 2014-00674, *Adherence to Federal Laws Prohibiting Marijuana Use*, which states:

[C]hanges to state laws and the laws of the District of Columbia pertaining to marijuana use do not alter the existing National Security Adjudicative Guidelines (Reference H and I). An individual's disregard of federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations. As always, adjudicative authorities are expected to evaluate claimed or developed use of, or involvement with, marijuana using the current adjudicative criteria. The adjudicative authority must determine if the use of, or involvement with, marijuana raises questions about the individual's judgment, reliability, trustworthiness, and willingness to comply with law, rules, and regulations, including federal laws, when making eligibility decisions of persons proposed for, or occupying, sensitive national security positions.

The guideline notes several conditions under AG ¶ 25 that could raise security concerns in this case: "(a) any substance misuse (see above definition); and (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia."

Applicant purchased, possessed, and used marijuana from 2005 until at least January 2015. AG ¶¶ 25(a) and (c) have been established.

The guideline also includes examples of conditions under AG ¶ 26 that could mitigate security concerns arising from Drug Involvement and Substance Misuse:

(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; and

(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; and (3) providing a signed statement of intent to abstain from all drug involvement and

substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

I have concluded that none of the AGs apply. Applicant's drug involvement and substance misuse took place over a ten-year period, and the circumstances under which it occurred were not unusual. Applicant admitted that he purchased marijuana, possessed it, and used marijuana, at least until January 2015. He admittedly tested positive for marijuana in a job-related incident. He was arrested in 2008 and again in 2011 for possession of marijuana. After 2008, he stated an intention not to use marijuana in the future. Nevertheless, he did, for he was arrested again in 2011. In July 2014, Applicant told the OPM investigator that he stopped using marijuana in January 2014, and that he had no intention of using it in the future. However, in his response to the interrogatories in October 2016, Applicant admitted that he had continued using marijuana until January 2015. He offered no explanation as to why he continued using marijuana after 2008, 2011, January 2014, or why he stopped using marijuana in January 2015, or what his most recent intentions might be regarding his future use of marijuana. He never indicated that he would no longer associate with the friends with whom he used marijuana or to whom he paid money for the marijuana he smoked. There is no signed statement of intent to abstain from all drug involvement and substance misuse. Applicant's actions, under the circumstances, continue to cast doubt on his current reliability, trustworthiness, and good judgment.

Guideline E, Personal Conduct

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

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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

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

deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

As noted above, on May 5, 2014, and again on July 30, 2016, when Applicant completed his two e-QIPs, he responded to certain questions pertaining to his financial record, police record, and the illegal use of drugs or drug activity. The questions in Section 22 – Police Record; Section 23 – Illegal Use of Drugs or Drug Activity; and Section 26 – Financial Record, all asked significant questions with a direct bearing on his security clearance eligibility. Applicant answered “no” to all those questions. He certified that the responses were “true, complete, and correct” to the best of his knowledge and belief, but the responses to the questions in those sections were, in fact, false. With respect to the answers on the 2014 e-QIP, Applicant was not candid with the OPM investigator. In his Answer to the SOR, Applicant admitted that he had deliberately failed to disclose his true financial record, police record, and illegal use of drugs or drug misuse, as set forth in the SOR. AG ¶ 16(a) has been established.

The guideline also includes examples of conditions under AG ¶ 17 that could mitigate security concerns arising from personal conduct. They include:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

I have concluded that none of the mitigating conditions apply. Applicant's repeated falsifications regarding his finances, police record, and illegal use of drugs or drug activity, in his May 2014 and July 2016 e-QIPs by intentionally failing to disclose the true extent of those issues is recent, serious, and not mitigated. A key component of the protection of classified information is reliance on security clearance holders to accurately report potential compromise of classified information. A person who has delinquent accounts, arrests, and drug activity, and who deliberately denies having them on their e-QIPs cannot

be relied upon to report potential compromise of classified information. Applicant's actions, or relative inaction, under the circumstances cast substantial doubt on his current reliability, trustworthiness, and good judgment.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at SEAD 4, App. A, ¶ 2(d):

(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 SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.¹⁵

There is some evidence in favor of mitigating Applicant's conduct. He graduated from high school and earned two degrees. He has served as a help desk technician since July 2016. And, in an ironic twist, after being confronted by his repeated falsifications, he finally candidly admitted that he had previously deliberately lied on his e-QIPs.

The disqualifying evidence under the whole-person concept is simply more substantial, and diverse. Applicant has an extensive history of financial problems, with eight delinquent debts, including seven student loans, and one cellular telephone account, totaling approximately \$80,342. Although he claimed that he was making payments on his accounts, he failed to submit documentary evidence to support his claimed debt payments. Applicant used marijuana from about 2005 until at least January 2015. He tested positive for marijuana in a job-related incident; was arrested for possession of marijuana in 2008; and again in 2011. After each arrest, he stated an intention not to use marijuana in the future, but he failed to abide by his stated intention. In July 2014, he told the OPM investigator that he had stopped using marijuana in January 2014, and that he had no intention of using it in the future. Those statements were also false, for he later admitted that he had continued using marijuana until January 2015. When Applicant

¹⁵ 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).

completed his two e-QIPs, he deliberately lied in response to questions pertaining to his financial record, police record, and the illegal use of drugs or drug activity.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:¹⁶

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

Applicant has demonstrated an extremely poor track record of debt reduction and elimination efforts, seemingly avoiding resolution of his debts. His intentional falsifications regarding his finances, police record, and drug activity are very troubling. Overall, the evidence leaves me with substantial questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has failed to mitigate the security concerns arising from his financial considerations, drug involvement and substance misuse, and personal conduct. See SEAD 4, App. A, ¶¶ 2(d)(1) through 2(d)(9).

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparas 1.a. through 1.h.:	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT

¹⁶ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Subparas 2.a. through 2.c.: Against Applicant

Paragraph 3, Guideline E: AGAINST APPLICANT

Subparas 3.a. through 3.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 interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ROBERT ROBINSON GALES
Administrative Judge