



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



In the matter of:)	
)	
)	ISCR Case No. 14-05162
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric C. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

02/23/2016

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant owed approximately \$18,301 in delinquent debt as of April 2015, \$14,962 of which was for a vehicle loan co-signed for his wife. They defaulted on the loan because the car had engine trouble a short time after purchase and repairs were not covered by warranty. He has resolved some debts and is making payments on others, including the car loan. Applicant used marijuana between June 2004 and October 2007, and once in November 2013. He regrets his drug use and does not intend any future drug involvement. Clearance granted.

Statement of the Case

On April 15, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant,¹ detailing the security concerns under Guideline F, Financial Considerations, and Guideline H, Drug Involvement, and explaining why it was unable to find it clearly consistent with the national interest to grant or continue his security clearance eligibility. The DOD CAF took the action under

¹ Applicant's surname was misspelled in the SOR. It is correct in the caption.

Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

On May 11, 2015, Applicant answered the SOR allegations except for SOR ¶ 1.j, and he requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). In response to an email from the DOD CAF, Applicant answered SOR ¶ 1.j. On July 21, 2015, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On July 23, 2015, I scheduled the hearing for August 21, 2015.

At the hearing, five Government exhibits (GEs 1-2) and 16 Applicant exhibits (AEs A-P) were admitted into evidence without objection. A chart prepared by Department Counsel as a supplement to his oral closing argument was incorporated in the record as a hearing exhibit (HE 1) but not entered as an evidentiary exhibit. Applicant testified, as reflected in a transcript (Tr.) received on August 28, 2015.

At Applicant's request, I held the record open until September 18, 2015, for post-hearing submissions. Applicant timely submitted 13 documents, which were admitted as AEs Q-CC. Department Counsel filed no objections by the October 9, 2015, final deadline for comment.

Summary of SOR Allegations

The SOR alleges under Guideline F that Applicant owed \$18,301 in delinquent debt (SOR ¶¶ 1.a-1.m) as of April 15, 2015, \$14,962 of which was owed on a defaulted vehicle loan (SOR ¶ 1.a). Under Guideline H, Applicant is alleged to have used marijuana between June 2004 and November 2013 (SOR ¶ 2.a). Applicant admitted the allegations, some with explanation. About the debt in SOR ¶ 1.a, he had cosigned a loan for his spouse for a vehicle that had engine trouble only a few months after purchase. He was told the repair would be covered by warranty, but the manufacturer then refused to cover the repair costs. Several medical debts went to collection because he lacked the income to pay them. Applicant explained that his marijuana use was "extremely infrequent with even a six-year gap between uses." He passed a drug screen for his current employer and was willing to execute a statement of intent to refrain from illegal drug use.

Findings of Fact

Applicant's admissions to the debts and marijuana use are accepted and incorporated as factual findings. After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact:

Applicant is a 29-year-old high school graduate with a certificate from a community college in machining. He started as an installation mechanic (outside machinist) with a

defense contractor in mid-March 2014. (GE 4; AEs B-C; Tr. 22, 24.) In late July 2015, he was promoted to operations supervisor with foreman responsibility for 16 other machinists. (Tr. 25, 30.) He has been married since June 2008 and has three children, ages 3, 6, and 7. He also has a 16-year-old stepdaughter with whom his spouse shares joint custody with her ex-husband. (GE 1; Tr. 23-24.) Applicant and his spouse receive no child support for her daughter. (Tr. 24.)

Financial

Following his graduation from high school in June 2004, Applicant worked as a full-time carpenter until he was laid off in September 2004. He collected unemployment compensation until October 2005, when he began working as a department manager for a home improvement retailer. He worked at three different locations for the company. (GE 4.) His federal taxable income was \$21,897 in 2007. (AE E.) In November 2007, he accepted a transfer to another state. Over the next five months, he had eight infractions regarding to time issues and was terminated from his job in April 2008. (GEs 1, 4; Tr. 26.)

From June 2008 to August 2009, Applicant worked as a group leader for a manufacturer. His oldest child, a son, was born in September 2008. In August 2009, shortly before the birth of his second child, a daughter, Applicant began working two full-time jobs: in quality control for a flooring company, and as a tire technician. (GE 1.) He was behind three months on the rent at the time, and Applicant took a second job to catch up on living expenses. (Tr. 48.) He was fired by the flooring company in May 2010 for attendance issues. (GE 4; Tr. 26.) In September 2010, he was terminated by the tire company when he reported late to work. Applicant was then employed as a mechanic apprenticeship at a car dealership until August 2011, when he was laid off. Applicant collected unemployment compensation until December 2011, when he started working as an inspector for a machinery company. (GEs 1, 4.)

In June 2012, Applicant co-signed on a \$22,645 vehicle loan for his spouse (SOR ¶ 1.a). (Tr. 45.) The loan repayments were \$520 per month for 73 months. (GE 2.) His gross annual salary was \$28,337, and she did not work outside the home. (AE G.) About four months after they bought the car, the engine stopped working. To find the source of the problem and to verify if the cost of repair was covered under the car's warranty, Applicant agreed to have the engine removed at a cost of \$2,000. When it could not be conclusively determined that the cause of the problem was covered under warranty, Applicant tried without success to have their lender cover the cost of the repair and add the cost to the end of the auto loan. (Tr. 41-45.) Applicant and his spouse had made timely payments on the loan through December 2012, but after six months of no payments, the loan was charged off in June 2013 and the vehicle was repossessed. (GE 2; Tr. 41.) As of March 2014, Applicant and his spouse were contractually liable for \$14,962 on the loan. (GE 2; Tr. 46.)

Starting around September 2012, Applicant began to miss time at work for medical appointments for his two autistic children. (GE 4.) His employer was initially accommodating, but In April 2013, Applicant was fired from his job for attendance issues.

(GE 1; Tr. 27-28.) His ensuing financial struggles triggered marital problems. Applicant and his spouse separated in September 2013, and he moved back home where he believed he would find work. (GE 4; Tr. 36-38.) He stayed with his grandfather rent free but provided \$150 to \$200 a month toward utility costs. (Tr. 37-38.) In October 2013, Applicant began working as a part-time clerk at a convenience store for some income. (GEs 1, 4; Tr. 25.) His adjusted gross income totaled only \$10,198 in 2013, of which \$4,185 was unemployment compensation. (AE H.) Applicant and his spouse reconciled, and he moved his family at a cost of \$2,000 in February 2014. (Tr. 37, 100.) Applicant paid for the moving costs with their income tax refund. (Tr. 103.)

Applicant completed and certified to the accuracy of an Electronic Questionnaire for Investigations Processing (e-QIP) on February 27, 2014, to work for his current employer. (GE 1.) He responded affirmatively to the financial record inquiries into any delinquencies involving routine accounts and listed eight debts: a \$594 charged-off credit card debt from May 2007 resolved in January 2008; a \$93 library fine (SOR ¶ 1.k) from November 2009 in collection; a \$155 medical debt (SOR ¶ 1.i) from December 2009 in collection; \$63 and \$136 (SOR ¶¶ 1.l and 1.j) debts for DVDs from March 2010 in collection; a \$335 medical debt (SOR ¶ 1.c)² from June 2010 in collection; a \$250 medical debt (SOR ¶ 1.g) from June 2013 in collection; and a \$15,080 charged-off balance on the automobile loan co-signed for his spouse (SOR ¶ 1.a). Applicant explained that he was using an online credit reporting service in an effort to improve his credit. (GE 1.)

Applicant started working for his employer on March 19, 2014, at \$18 an hour. (AEs B, C.) Shortly thereafter, he and his family moved into their current apartment. The rent is \$975 per month. (AEs J, K; Tr. 104.) A check of Applicant's credit on March 13, 2014, revealed disputed joint contractual liability for \$14,962 on the automobile loan in SOR ¶ 1.a. As of January 2014, Applicant was reportedly past due 60 days on a secured loan balance of \$1,171 (SOR ¶ 1.b). Facing possible eviction and cut-off of his electricity service, he opened the account in March 2012, using his vehicle as collateral. (Tr. 47.) In addition to the collection debts listed on his e-QIP (SOR ¶¶ 1.g, 1.i-1.l), he owed collection debts of \$528 (SOR ¶ 1.f), \$230 (SOR ¶ 1.h), and \$60 (SOR ¶ 1.m). (GE 2.)

On April 8, 2014, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). Applicant did not dispute his liability for the collection debts, which became delinquent due to lack of funds. He expressed his intent to pay a \$93 library debt (SOR ¶ 1.k) for a lost book within the next two months. He was uncertain about when he would be able to pay the other collection debts, although he planned to address them one at a time. Applicant disputed his and his spouse's liability for the charged-off automobile loan (SOR ¶ 1.a) in that the engine went on the vehicle when the car was under warranty, but the warranty was not honored. About the secured loan that was 60 days past due (SOR ¶ 1.b), Applicant explained that he borrowed the funds to pay his rent and the balance of an auto loan.³ He had made \$110 payments on the loan in

² A recent credit report (GE 5) shows that the medical debt was originally \$168. (GE 5.)

³ Applicant's credit record (GE 3) confirms that he opened a car loan of \$6,286 in February 2010 and paid it off in May 2012.

February 2014 and in April 2014 but nothing since then. He acknowledged he was behind in his payments because of a lack of funds. Applicant did not recognize a \$230 collection debt (SOR ¶ 1.h) reportedly owed a cable communications company. Applicant indicated that he has been monitoring his credit online. (GE 4.)

Around April 2014, Applicant began taking online college classes. (GE 4.) He took out a federal loan of \$1,651 to cover the costs. (GEs 3, 5.)

As of September 17, 2014, Equifax was reporting no progress toward resolving the disputed auto loan (SOR ¶ 1.a) or the \$335 medical collection debt (SOR ¶ 1.c). Applicant owed \$1,237 on his secured loan (SOR ¶ 1.b), which was 120 days past due. Two additional debts had been placed for collection in 2014: a \$316 medical debt (SOR ¶ 1.d) from June 2011 and a \$192 utility debt (SOR ¶ 1.e) from January 2014. (GE 3.) About the utility debt, Applicant mistakenly assumed that the initial deposit on the account would cover the bill after his spouse moved from the property. (Tr. 50-51.) Some collection debts had been dropped from his credit record. (GE 3.)

Applicant and his spouse reported \$36,555 in adjusted gross income in 2014. (AE I.) They received a \$1,370 state tax refund (AE I), which went toward the purchase of a 2007 model-year minivan for her in 2015 when her car failed state inspection. (Tr. 58-60.) Available credit records show that Applicant opened an automobile loan in February 2015 for \$8,447. (GE 5.) Applicant drives a 2002 model-year vehicle that he bought outright in 2014 for \$1,000. (Tr. 59, 97.) He had some other car expenses in 2015, including for two new tires and a new clutch. (AEs T, CC; Tr. 99.)

Applicant met his employer's expectations in all work performance criteria rated during his first year on the job. (AEs B, C; Tr. 30.) He was considered to be an asset to his department, conscientious in carrying out his duties, and a leader in his area. He received an increase in his hourly wage equivalent to approximately \$140 a month. (AE C.) Applicant received one verbal warning for a noncompliance issue with specifications but no other reprimands. (Tr. 29.)

As of June 30, 2015, Equifax was reporting past-due balances of \$14,962 on the disputed auto loan debt (SOR ¶ 1.a), \$1,171 on the secured loan (SOR ¶ 1.b), \$250 on his federal student loan balance of \$1,601, and collection balances of \$192 (SOR ¶ 1.e) and \$335 (SOR ¶ 1.c). Applicant was making timely payments on the February 2015 car loan for his spouse's vehicle. (GE 5.) Applicant had not attempted to resolve the charged-off auto loan (SOR ¶ 1.a) since late 2013 (Tr. 41.) Applicant's household budget, with rent at \$975, car payment of \$250, and \$200 for his student loan,⁴ left a monthly cash flow of \$382, but with only \$400 a month for food and nothing budgeted for personal care or clothing expenses. (AE J; Tr. 85.)

⁴ Applicant testified that he was paying \$200 a month for classes he took at a community college. (Tr. 85.) According to his e-QIP, he attended the community college during the fall semester 2011. (GE 1.) Available credit reports list only one student loan of \$1,651 opened in April 2014. (GEs 3, 5.)

With his promotion in late July 2015, Applicant became a salaried employee at \$79,000 annually. (Tr. 30.) Applicant retained the services of a debt resolution law firm at a cost of \$99.95 a month to verify the debts on his credit record, to negotiate “pay-to-delete terms,” to assist him in resolving the charged-off car loan (SOR ¶ 1.a), and to advise him on rebuilding his credit so that he can purchase a home for his family someday. (AEs D, U; Tr. 67-70.)

Applicant also began contacting his creditors to arrange for repayment or settlements of debts. (Tr. 50.) On August 20, 2015, Applicant satisfied the debts in SOR ¶ 1.e (AE L; Tr. 51), SOR ¶ 1.j (AE M), and SOR ¶ 1.l. (AE N.) He paid \$183 in full settlement of the \$230 balance of SOR ¶ 1.h. (AE O; Tr. 53-54.) As of September 15, 2015, Applicant had paid the \$528 and \$60 medical debts in SOR ¶¶ 1.f and 1.m. (AE V; Tr. 51-52.) Applicant tried to pay the medical debts of \$250 from March 2012 (SOR ¶ 1.g) and \$316 from June 2011 (SOR ¶ 1.d), but the creditor no longer had his account information. (Tr. 52.) On August 21, 2015, a collection agency notified Applicant that both accounts were being removed from his credit record. (AE W.) Applicant was awaiting settlement documents for his unsecured loan (SOR ¶ 1.b). The creditor offered to settle for 50-75% of the balance. (Tr. 47.) Applicant had no success reaching the creditors holding the \$335 (SOR ¶ 1.c) and \$155 (SOR ¶ 1.i) medical debts or the \$93 library debt (SOR ¶ 1.h), although he expressed intent to pay them soon. (Tr. 48-49, 54-55.)

On September 14, 2015, the assignee for his spouse’s charged-off car loan debt (SOR ¶ 1.a) agreed to accept \$5,236.82 in settlement of the \$14,962 balance if paid by February 28, 2016. An initial payment of \$1,000 was due by September 30, 2015, followed by monthly payments of \$848. Two days later, the repayment terms were modified to allow for monthly payments of \$523.68 from September 2015 to June 2016. Applicant submitted the first payment on September 18, 2015. (AE AA.)

On September 18, 2015, Applicant completed online credit counseling from a credit counseling service recognized by the federal bankruptcy court. (AEs Y, BB.) Based on financial information provided by Applicant to the credit counseling service, he had \$1,799 in income each month after expenses, but not including any debt payments. (AE BB.) Applicant’s take-home pay for the two weeks ending September 19, 2015, was \$1,984. (AE Q.) Applicant has a health savings account at work into which he contributes \$150 a month to assist with paying medical and dental costs for his family. (AE S.) As of August 2015, Applicant and his spouse had incurred \$3,700 in medical expenses in 2015. His deductible is \$4,000. (Tr. 101.)

Applicant’s spouse does not work outside the home. (Tr. 31.) She is taking some online college courses toward an accounting degree and has some small student loans that she will have to start repaying six months after she earns her degree. (Tr. 32-33.) With the cost of child care, it made more sense for her to obtain her degree before entering the workforce. In August 2015, Applicant and his spouse obtained cable services at \$120 per month so that she would have access to the Internet for her schooling. (AE K; Tr. 59-60.)

Drug Involvement

On his February 27, 2014 e-QIP, Applicant responded affirmatively to whether he had illegally used a drug or controlled substance in the last seven years. He indicated that he used marijuana between June 2004 and November 2013. As for the frequency of his use, Applicant indicated that he used marijuana socially two or three times a month. In further explanation, Applicant discrepantly added that he had been “clean” for five years when he made a poor choice and apparently used marijuana with someone who was smoking the drug. He expressed his desire to stay clean so that he could keep a good job and provide for his family. (GE 1.) Applicant had passed a pre-employment drug screen (hair follicle test) taken on February 11, 2014. (AE P; Tr. 81-82.)

During his subject interview of April 8, 2014, Applicant clarified that he smoked marijuana two to three times a month from June 2004 to October 2007 and once in November 2013. He explained that he had not known how to report the break in his marijuana use when he completed his e-QIP. Applicant explained that he used marijuana “usually in a house with his wife,” and with one of two named friends between June 2004 and October 2007. About his more recent drug use, he went to a then co-worker’s home in November 2013 to fix a wall, and he took “a puff” from a marijuana cigarette offered by the co-worker. Applicant could not offer an explanation for why he used the marijuana on that occasion. Applicant admitted that he had purchased marijuana between June 2004 and October 2007 for his own use. He denied any use of marijuana since November 2013 or any current association with persons who use illegal drugs. (GE 4; Tr. 34-36.)

At his hearing, Applicant attributed his use of marijuana in November 2013 to the fact that he was “under a little bit of emotional duress.” He and his spouse were separated at that time, and she was debating whether to move to his locale. (Tr. 35.) He knew at the time that smoking marijuana was “a dumb decision.” (Tr. 40.)

Applicant has not been around anyone smoking marijuana since that occasion in November 2013. (Tr. 39-40.) Applicant’s un rebutted testimony is that his spouse does not use marijuana. (Tr. 40.) On September 18, 2015, Applicant executed a statement of intent to not use illegal drugs, associate with known drug users, or place himself in environments of drug use with the understanding that any violation would result in the automatic revocation of any security clearance granted to him. (AE Z.)

Character References

Applicant’s current landlord is a local attorney who previously rented to Applicant eight to nine years ago. Applicant was always “courteous, trustworthy, and honest.” When Applicant contacted this landlord about an apartment after he moved back to the area, he “gladly” rented an apartment to him and his family. Applicant pays his rent on time and maintains the property in good order. (AE A.) Applicant’s spouse attests to Applicant’s willingness to seek out work to provide for their family, despite times of financial hardship and other adversities, including having two children with autism. (AE X.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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 overall 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 to obtain 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. 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 about financial considerations is articulated 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 F concerns are established by the collection debts and the charged-off automobile loan. Disqualifying conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," are implicated.

Some of Applicant's medical debts became delinquent more than five years ago. The \$528 (SOR ¶ f) and \$60 (SOR ¶ 1.m) medical debts are from 2007. Other debts were incurred more recently, such as the car loan (SOR ¶ 1.a) and the secured loan (SOR 1.b). Last payments on those accounts were in December 2012 and October 2013, respectively. None of the delinquencies in the SOR were incurred after Applicant started working for his current employer in March 2014. Yet, it is difficult to apply AG ¶ 20(a), "the behavior happened so long ago, was so infrequent, or occurred under circumstances that it is unlikely to recur and does not cast doubt on the individual's current, reliability, or good judgment." As of the issuance of the SOR in April 2015, none of the debts had been resolved.

Lack of income appears to be the root cause of Applicant's financial difficulties, but Applicant bears responsibility for some of his unemployment. He lost a job in April 2008 for infractions relating to time issues. While working for a manufacturing company from June 2008 to August 2009, Applicant's pay was insufficient to cover his household expenses. Three months behind in the rent, he took on a second full-time job in August 2009 to avoid eviction and termination of electricity service. While his willingness to take on a second job to pay his debts weighs in his favor, Applicant then lost both jobs for attendance issues.

Applicant's job layoff and unemployment from August 2011 to December 2011 implicate AG ¶ 20(b), which provides:

(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.

While working as an inspector from December 2011 to April 2013, Applicant co-signed on a car loan for his spouse, certainly not knowing that the vehicle would have serious engine problem only a few months later. In April 2013, he lost his job for attendance issues, but the lost time was to accompany his children with special needs to medical appointments. He was unemployed until October 2013, when he began working part time as a clerk in a convenience store. Available income tax returns for tax years 2012 and 2013 show that his adjusted gross income decreased from \$28,337 in 2012 to only \$10,198 in 2013, which was certainly not enough to support his family and expect him to repay his delinquent debts. Applicant started working for his defense contractor employer at \$18 an hour in March 2014, but his income was not enough for him to pay household expenses and address his old debts, which included nondiscretionary medical debt.

Applicant also makes a credible case for mitigation under AG ¶¶ 20(c) and 20(d), which provide:

(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, and

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

On being promoted in late July 2015 to a salaried position, Applicant's income doubled to \$79,000 annually. Applicant retained the services of a law firm to verify the debts on his credit report and to negotiate a settlement of the charged-off automobile loan. He used his first paycheck as a salaried employee to satisfy, in full, the debts in SOR ¶¶ 1.e, 1.f, 1.j, 1.l, and 1.m, and to settle the debt in SOR ¶ 1.h. He has repayment arrangements in place to settle his spouse's car loan debt of \$14,962 for \$5,236.82, and he made the first payment. Applicant tried to pay the \$250 and \$316 medical debts in SOR ¶¶ 1.g and 1.d. After his hearing, he received documentation indicating that those debts were being removed from his credit report, so he is not likely to be pursued for those debts. Applicant took online credit counseling.

Applicant and his spouse still owe approximately \$5,000 to settle her defaulted car loan. Applicant has yet to resolve the \$1,172 secured loan, the \$335 and \$155 medical debts, and the \$93 library book debt. He is awaiting paperwork to settle the secured loan and intends to pay the medical debts and library debt soon. Nothing in the Directive requires that Applicant completely pay off all his past-due debts to be eligible for a security clearance, however. Applicant has acted responsibly to address his debts once he had the income to make payments, and he is likely to continue to resolve his debts to keep the well-paying job that he needs to support his family. He has no record of extravagant spending or of reliance on consumer credit debt that could strain his finances going forward. The financial considerations are mitigated.

Guideline H, Drug Involvement

The security concern for drug involvement is articulated 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.

Under AG ¶ 24(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.

Under AG ¶ 24(b), drug abuse is defined as "the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction." Disqualifying condition AG ¶ 25(a), "any drug abuse," applies because Applicant used marijuana two to three times a month between June 2004 and October 2007 and one time in November 2013. The evidence also shows that he purchased marijuana for his own use between June 2004 and October 2007. While illegal drug purchase is potentially a disqualifying condition under AG ¶ 25(c), "illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution, or possession of drug paraphernalia," the SOR did not allege his marijuana purchases as an issue of security concern.⁵ AG ¶ 25(c) applies in that he had physical possession of marijuana when he smoked the drug.

Applicant used marijuana once after being abstinent from the drug for six years. His one-time use in recent years cannot be viewed in isolation from his years of recurrent abuse. Mitigating condition AG ¶ 26(a), "the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment," does not apply in this case.

⁵ In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

- (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

Id. (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)).

Applicant has been candid about his drug involvement, disclosing his marijuana use on his e-QIP and during his interview with the OPM investigator. He has consistently denied any intent to use illegal drugs in the future. He denies any current association with anyone who uses illegal drugs. Concerning AG ¶ 26(b), “a demonstrated intent not to abuse any drugs in the future,” can be shown by:

- (1) disassociation from drug-using associates and contacts;
- (2) changing or avoiding the environment where drugs were used;
- (3) an appropriate period of abstinence; or
- (4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant informed an OPM investigator in April 2014 that his marijuana use between 2004 and 2007 usually occurred “in a house with his wife” and with either one of two friends, whom he named. He smoked marijuana in November 2013 with a then co-worker, when he was at the co-worker’s home to repair a wall. There is no evidence of any ongoing relations with the friends or co-worker involved in his past drug use, and Applicant’s un rebutted testimony is that his spouse no longer uses any marijuana. His present abstinence of some two years in and of itself provides insufficient guarantee against relapse, given he used marijuana in 2013 after not using marijuana in the preceding six years. However, his present circumstances make any future marijuana use unlikely. He and his spouse were separated when he used marijuana in November 2013. Now, they are reconciled. He has a well-paying job with a defense contractor that serves as a significant deterrent to any future drug involvement. Applicant has professed orally, and executed a written statement, albeit unsigned, of no intent to use any illegal drug in the future with the understanding that his security clearance eligibility would be revoked for any violation. He has every incentive to maintain a drug-free lifestyle. The drug involvement concerns are mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of his 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.

Most of Applicant's drug involvement occurred during his teens and early 20s and is reasonably attributable to immaturity. He showed poor judgment when he accepted the offer of marijuana from a then co-worker in November 2013, but he is remorseful for his conduct and does not intend to repeat it. The attendance issues that caused or contributed to his job loss have not occurred in his present employment. He demonstrated such competence and leadership at work that he was promoted to a supervisory position after only 16 months on the job.

As for the financial concerns, the DOHA Appeal Board has addressed a key element in the whole-person analysis in financial cases, stating:

[A]n applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrates that he has . . . established a plan to resolve his 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 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.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted). The payments Applicant has made toward resolving his delinquencies provide assurance that he can be counted on to continue to address his debts. The Government can re-validate Applicant's financial status at any time through credit reports, investigation, or interrogatories. Approval of classified access to Applicant now would not bar the Government from revoking it, if required.⁶ After considering all the evidence, I conclude that it is clearly consistent with the national interest to grant Applicant security clearance eligibility.

⁶ The DOHA Appeal Board has held that the Government has the right to reconsider the security significance of past conduct or circumstances in light of more recent conduct that has negative security significance. See ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012).

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: FOR APPLICANT

Subparagraphs 1.a.-1.m: For Applicant

Paragraph 2, Guideline H: FOR APPLICANT

Subparagraph 2.a: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Elizabeth M. Matchinski
Administrative Judge