



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



Appearances

For Government: Karen Moreno-Sayles, Esq., Department Counsel
For Applicant: Matthew Thomas, Esq.

09/12/2025

Decision

FOREMAN, LeRoy F., Administrative Judge

This case involves security concerns raised under Guidelines H (Drug Involvement and Substance Misuse) and F (Financial Considerations). Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 25, 2024. On December 31, 2024, the Defense Counterintelligence and Security Agency (DCSA) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines H and F. The DCSA acted under Executive Order (Exec. Or.) 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), which became effective on June 8, 2017.

Applicant answered the SOR on January 13, 2025, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on February 19, 2025. The case was assigned to me on June 28, 2025. On July 8, 2025, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on August 15, 2025. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without

objection. Department Counsel requested that I take administrative notice of the facts recited in a drug fact sheet from the Department of Justice Drug Enforcement Administration, which is attached to the record as GX 4. I took administrative notice as requested, without objection from Applicant. Department Counsel moved to correct SOR ¶ 2.f by changing the name of the alleged creditor. I granted the motion, without objection by Applicant. (Tr. 9) Applicant testified and submitted Applicant's Exhibits A through M, which were admitted without objection. The record closed upon adjournment of the hearing. DOHA received the transcript on August 29, 2025.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations in the SOR. His admissions are incorporated in my findings of fact.

Applicant is a 38-year-old production engineer who has been offered employment by a defense contractor, contingent on his receiving a security clearance. (AX L) He graduated from high school in 2005. He was accepted by a university but chose to work at various jobs that did not require a college degree or a security clearance. In 2008, he was diagnosed with multiple sclerosis. His left arm and leg and the left side of his face were paralyzed. He was determined to recover, and he became strong enough to run a marathon in 2012. (Tr. 19)

Applicant has never married, but he has a son who was born in April 2010. He attended a community college from 2010 to 2012 and received an associate degree in August 2012. He received a bachelor's degree in May 2017 and began working for a company that made therapeutic proteins for cancer patents. He considered his employer a "great company," but it was too far from where his son lived, and so he quit this job. In February 2018, he began working for a company that made purified chemicals for semiconductor chips. This was his first job as an engineer. In June 2019, he tested positive for marijuana after a random drug test. His employer gave him a "second chance," and he was not terminated. (GX 2 at 20) At the hearing, he testified that his marijuana use halted after this incident and he did not resume his use until the end of 2020. (Tr. 36-37)

Applicant changed jobs in November 2019, in order to be closer to his son, and he began working as a plant engineer for a company that processed fruits and vegetables into purees and juices. He admitted that he used marijuana during this period of employment, knowing that it was contrary to the company's policy about marijuana use. (Tr. 47) He left this job in August 2023 and was hired by his current employer in January 2024. (Tr. 20-24) However, he could not begin working, because he has never held a security clearance.

When Applicant submitted his SCA in January 2024, he disclosed that he first used marijuana in July 2003, while in high school, and he most recently used it in December 2023. Regarding his frequency of use, he stated that he used it daily at different times. He also disclosed that he used hallucinogenic mushrooms about five times between June 2008 and August 2023. He obtained mushrooms from a childhood friend with whom he

no longer has any contact. (Tr. 31-32) In his SCA, he declared that he did not intend to use marijuana or mushrooms again. (GX 1 at 33)

During a security interview in April 2024, Applicant told the investigator that he did not use marijuana between December 2023 to February 2024, but that he had resumed using it three or four times a week. (GX 2 at 5) In his response to DOHA interrogatories in November 2024, he stated that he last used mushrooms in August 2023 and marijuana in September 2024. (GX 2 at 16). He also stated that he was living with the mother of his son, who uses marijuana daily, but that he intended to move out and live elsewhere. (GX 2 at 18) At the hearing, he testified that he was living with his son's grandmother (the mother of his son's marijuana-using mother) until he could save up enough money to live alone. (Tr. 41)

Applicant testified that his marijuana use "picked up" when it was legalized in his state of residence. (Tr. 35) He testified that he did not understand the difference between state and federal law regarding use of marijuana until he applied for a security clearance. (Tr. 38)

At the hearing, Applicant submitted a declaration of intent to never use illegal drugs in the future, acknowledging that any intentional violation of his statement of intent will result in automatic revocation of any suitability determination, fitness determination, or security clearance. (AX A) He also submitted a laboratory report of a negative hair follicle test for amphetamines, cocaine, marijuana, methamphetamines, opiates, and phencyclidine on June 6, 2025; and a certificate of completion of a drug and alcohol awareness class on August 7, 2025. (AX B; AX C)

The SOR alleges six delinquent debts reflected in a credit report from November 11, 2024 (GX 3) The evidence concerning these debts is summarized below.

SOR ¶ 2.a: credit union account charged off for \$180. Applicant incurred this debt when a credit union gave him \$200 for opening a checking account in March 2018. The credit union later demanded that he return the \$200 because he did not open a checking account. (Tr. 26-27) He submitted documentary evidence that the debt was paid in full on June 23, 2025, after he received the SOR. (AX D)

SOR ¶ 2.b: debt to a university referred for collection of \$10,985. This debt was a student loan. Applicant submitted a letter from the university stating that the debt was paid in full on February 8, 2021, and that the information on a credit report reflecting the debt was erroneous. (AX E) The debt was paid with a debt-consolidation loan that is now in forbearance until August 2026. (Tr. 28)

SOR ¶ 2.c: debt to an insurance company referred for collection of \$59. At the hearing, Applicant submitted an undated document from the collection agency reflecting that the debt was paid full. (AX F) This debt was incurred when Applicant changed automobile insurers and was charged a fee for the transfer. (Tr. 28-29)

SOR ¶ 2.d: debt to an insurance company referred for collection of \$78. Applicant submitted an undated document from the collection agency reflecting that the

debt was paid in full. (AX G) This debt also is a fee for a change of automobile insurance. (Tr. 28-29)

SOR ¶ 2.e: telecommunications account referred for collection of \$983.

Applicant submitted a letter from a collection agency reflecting his agreement to pay \$150 per month by direct debit for five months beginning on August 1, 2025, and a final payment of \$154 on January 2, 2026. (AX H) This debt was incurred when Applicant changed cellphone service providers without closing the previous account. (Tr. 29) The first payment was scheduled to occur two weeks before the hearing, but Applicant submitted no evidence that it actually occurred.

SOR ¶ 2.f: telecommunications account referred for collection of \$953.

Applicant submitted documentation of a payment of \$104 on August 16, 2025. (AX I) This debt was incurred when Applicant changed internet and cable service providers without closing the previous accounts. (Tr. 30)

At the hearing, Applicant presented letters from 16 individuals attesting to his good character. His mother, father, sister, brother, uncle, and the mother and grandmother of his son submitted letters attesting to his strong character and devotion to his son. (AX J-1 through J-8) A high school friend attests to his loyalty, hard work, and community involvement. (AX J-9) His former employer, who gave him the second chance after he violated company policy by using marijuana, attests to his hard work, honesty, diligence, and devotion to his son. (AX J-10) A former coworker attests to his integrity, loyalty, and calm leadership style. (AX J-11) Applicant's son's teacher attests to his devotion to his son, strong character, and deep sense of responsibility. (AX J-12) A coworker attests to his intelligence, communication skills, and leadership. (AX J-13) His pastor attests to his character, consistency, reliability, and willingness to serve others. (AX J-14) His high school basketball and soccer coach, with whom he has maintained contact, attests to his strong character as a person who "straps up his boots" and meets challenges head-on. (AX J-15) The president and director of a non-profit youth basketball organization has become a close friend of Applicant and admires him for his involvement in the organization and a volunteer coach. He describes him as an "honest and dependable individual who stands firmly by his values." (AX J-16)

Applicant testified that his family members who wrote statements about his character were aware of his marijuana use. However, several of the others, such as his son's teachers and the president of the non-profit youth basketball organization were not aware of it. (Tr. 53)

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. *Egan* at 531. Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." See ISCR Case No. 17-04166 at 3 (App. Bd. Mar. 21, 2019). It is "less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). "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). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan* at 531.

Analysis

Guideline H (Drug Involvement and Substance Misuse)

The concern under this guideline 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 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.

Applicant's admissions and the evidence submitted at the hearing establish the following disqualifying conditions under this guideline:

AG ¶ 25(a): any substance misuse (see above definition);

AG ¶ 25(b): testing positive for an illegal drug; and

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

The following mitigating conditions are potentially applicable:

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;

AG ¶ 26(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.

AG ¶ 26(a) is not established. Applicant has acknowledged his drug involvement and submitted evidence that he completed a drug and alcohol awareness class in August 2025, and tested negative for marijuana and several other controlled substances in June 2025. Both of these events were after he received the SOR in December 2024 and knew that his recent employment offer was in jeopardy. His drug involvement is recent, has been frequent, and did not occur under circumstances making recurrence unlikely.

AG ¶ 26(b) is not established. Applicant has provided a signed statement of intent, but he continues to associate with drug users, including the mother of his son, who uses marijuana daily. It is not clear whether he continues to associate with the childhood friend who gave him mushrooms. He has not changed the environment where he has used drugs. He has repeatedly promised to refrain from using marijuana and then broken that promise. He used marijuana in June 2019, knowing that he was violating his employer's policy against marijuana use. He used marijuana again in 2020, knowing that he was violating his employer's policy. He used it again in September 2024 after submitting an SCA in January 2024. His record of broken promises undermines the probative value of the statement of intent submitted at his hearing.

Guideline F, Financial Considerations

The security concern under this guideline 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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions and the evidence submitted at the hearing establishes the following disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts; and

AG ¶ 19(c): a history of not meeting financial obligations.

The following mitigating conditions are potentially applicable:

AG ¶ 20(a): the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(b): the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): 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;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

AG ¶¶ 20(a) and 20(b) are not established. Applicant's delinquent debts are recent, were frequent, and were not incurred under circumstances making them unlikely to recur or circumstances that were largely beyond his control. They were incurred because Applicant did not pay attention to his financial obligations or the consequences of making changes in the providers of various services. The debts that were established at the hearing are for relatively small amounts, but they are significant because they show a pattern of failing to pay attention to his financial obligations.

AG ¶ 20(c) is not established. Applicant provided no evidence of financial counseling. He testified that he is relying on his own research to learn how to better manage his finances.

AG ¶ 20(d) is not established. Applicant did not take steps to resolve any of the debts alleged in the SOR until he learned that they were impediments to obtaining a security clearance. Payments under pressure of obtaining a security clearance are not "good faith efforts." The timing of the resolution of financial problems is an important factor in evaluating an applicant's case for mitigation because an applicant who begins to resolve financial problems only after being placed on notice that his or her clearance was in jeopardy may lack the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests. ISCR Case No. 15-06440 at 4 (App. Bd. Dec. 26, 2017).

AG ¶ 20(e) is established for the student loan alleged in SOR ¶ 2.b. It is not established for the other debts alleged in the SOR, because Applicant did not dispute them.

Whole-Person Analysis

Under AG ¶ 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. An administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 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.

I have incorporated my comments under Guidelines H and F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Applicant was candid and sincere at the hearing. His devotion to his son is impressive. However, he has not overcome the concerns raised by his irresponsible conduct. After weighing the disqualifying and mitigating conditions under those guidelines and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his drug involvement and delinquent debts.

Formal Findings

I make the following formal findings on the allegations in the SOR:

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| Paragraph 1, Guideline H (Drug Involvement and Substance Misuse): | AGAINST APPLICANT |
| Subparagraphs 1.a-1.c: | Against Applicant |
| Paragraph 2, Guideline F (Financial Considerations): | AGAINST APPLICANT |
| Subparagraph 2.a: | Against Applicant |
| Subparagraph 2.b: | For Applicant |
| Subparagraphs 2.c-2.f: | Against Applicant |

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge