



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 10-03176

**Appearances**

For Government: Daniel Crowley, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

02/26/2013

**Decision**

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant mitigated drug involvement, personal conduct, and financial concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On May 23, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant<sup>1</sup>, which detailed reasons why DOD could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether his clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended, DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance*

<sup>1</sup> Applicant has since assumed her first husband's last name.

*Review Program* (January 2, 1992), as amended (Directive), and the Adjudicative Guidelines (AGs) implemented by the Department of Defense on September 1, 2006.

Applicant responded to the SOR on September 7, 2012, and requested a hearing. The case was assigned to me on October 12, 2012, and was scheduled for hearing on November 14, 2012. A hearing was held on the scheduled date. At the hearing, the Government's case consisted of nine exhibits (GEs 1-9); Applicant relied on three witnesses (including himself) and 34 exhibits. (AEs A-HH) The transcript (Tr.) was received on November 26, 2012.

### **Summary of Pleadings**

Under Guideline H, Applicant allegedly (a) used marijuana twice a week between December 2006 and March 2008 and (b) used marijuana after being granted a security clearance in August 2004. Under Guideline E, Applicant allegedly used marijuana after being granted a security clearance in August 2004. And under Guideline F, Applicant accumulated nine delinquent debts exceeding \$33,000.

In her response to the SOR, Applicant admitted all of the allegations covering her drug activities and accumulation of delinquent debts. She explained she always used marijuana in the privacy of her own home to aid in the management of her pain associated with multiple medical conditions. Applicant claimed the marijuana was recommended to her by second husband, who used marijuana for state-approved medicinal purposes. She claimed she has not used marijuana since 2008 and has no intention of resuming her use in the future.

Applicant claimed the debts covered by subparagraphs 3.a and 3.f, and by 3.b and 3.e are duplications of debts assigned to collection agencies. She claimed she was working on settling these debts with the original creditors. She claimed she settled the debts covered by subparagraphs 3.c and 3.g and is working on settling the debt alleged in subparagraph 3.i. She claimed the home equity loan alleged in subparagraph 3.h was allocated to her ex-husband in their divorce settlement and was ultimately included in her ex-husband's bankruptcy filing. She explained that she is working with a financial advisor to resolve any residual responsibility with the creditor.

### **Findings of Fact**

Applicant is a 34-year-old project specialist for a defense contractor. She seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

### **Background**

Applicant married her first husband in July 1998 and divorced him in July 2003. (GE 1) She has no children from this marriage. (GE 1) She married her second husband

in June 2004. She separated from him in March 2008 and divorced him in 2009. (GEs 1 and 6; Tr. 42) She has one child from this marriage.

In April 1999, Applicant earned a medical assisting diploma from a business college. (GE 1 and AE M) She served three years of active duty in the Marine Corps and received a general discharge in June 1997 under honorable conditions due to a physical condition not a disability. (GE 1)

### **Applicant's drug history**

Applicant did not use illegal drugs in high school and was introduced to marijuana in 2006 by her husband for pain-related medicinal reasons after she suffered a stroke. (GE 5) Following her stroke, she was administered three MRIs by her treating neurologist in October 2006 and referred to her primary physician for monitoring and treatment of multiple stroke risk factors. (AEs I and HH; Tr. 40) Applicant received further treatment from her rheumatologist for pain-related issues associated with her diagnosed fibromyalgia and myofascial pain syndrome. (AE I; Tr. 40)

Applicant used marijuana twice a week between December 2006 and March 2008 for pain management at home, and usually in the presence of her husband. (GE 5) She and her husband smoked marijuana in cigarette form. She never purchased or sold marijuana and never used any other type of illegal drug or abused prescription drugs. (GE 5)

During Applicant's second marriage, her husband used marijuana medicinally before introducing her to the drug and counseled her that marijuana would help her with her pain issues. (GE 5; Tr. 52-53) Marijuana was prescribed to Applicant's husband for medicinal reasons under their state's legal drug exception, but it was never prescribed to Applicant. (AE G; Tr. 53)

Applicant was treated by her medical providers for over two years after her stroke and was prescribed medications to address her pain issues. (AE J and HH) Marijuana never affected Applicant's emotions or judgment, and she has never been diagnosed, treated, or counseled for illegal drug-related issues. (GE 5)

Applicant's rheumatologist treated Applicant for chronic pain in March 2009. (AE I; Tr. 52-53) She was prescribed various pain medications to address her pain issues. When seen by a medical provider in January 2011, she was diagnosed with chronic interstitial cystitis and prescribed a host of medications to treat her condition. (AE FF) More recently, another medical provider diagnosed her with fibromyalgia, as well as lumbosacral disk generation and chronic interstitial cystitis. (AE EE) He prescribed her Vicodin for mitigation of her pain symptoms. She continues to be monitored by her providers and is regularly supplied updated medications.

Applicant held a security clearance during the 15 months she used illegal drugs between 2006 and 2008. (GE 5) She only used marijuana in the privacy of her home,

and generally for pain relief just before going to sleep. She assured that it never affected her job performance or her relationships with her family and friends. (GE 5) Asked about her past use of illegal drugs in her security clearance application (e-QIP) and interview with an agent from the Office of Personnel Management (OPM), Applicant fully disclosed her drug history and circumstances of her usage. (GEs 1 and 5: Tr. 40-41)

Aided by treatment, Applicant has been able to regulate her pain episodes much better and foresees no need to ever use marijuana again to medicate her pain disturbances. (Tr. 58-59) Since quitting her use of marijuana in March 2008, Applicant has never resumed her drug use and has no intention of ever returning to drug use for any reason. (GE 5; Tr. 54-58) In October 2012, she completed a notarized statement of intent never to use illegal drugs in the future and consented to automatic revocation of her security clearance should she ever do so. (AE K) Screened for ingestion of illegal drugs in March 2009, and again in October 2012, she produced across-the-board negative test results on each occasion. (GE 5 and AEs O and BB)

### **Applicant's finances**

Following her separation from her second husband in 2008, Applicant received no child or marital support from her husband and struggled with her finances. (GE 5; Tr. 42-43) Between March 2008 and 2010, she accumulated nine listed delinquent debts exceeding \$33,000. Some of these reported debts were maritally-related, and were defaulted on by her husband before he filed for bankruptcy. (GEs 2-5)

Several of Applicant's debts represent duplicated accounts attributable to multiple collection agency transfers. Based on her credible testimony and a review of corroborating credit reports and exhibits (GEs 2 and 3 and AEs Y and AA; Tr. 44-46, 55), inferences warrant that creditors 3.a (\$252) and 3.f (\$130), 3.b (\$1,459) and 3.e (\$1,169), and 3.c (\$1,169) and 3.g (\$1,780) represent duplicate accounts.

Applicant's creditor 3.c debt was reduced to a personal judgment in 2010 in the amount of \$3,143 and satisfied in full in February 2012 with an accepted check of \$1,732 following the issuance of a garnishment order. (GE 7; Tr. 46-47, 55-56) She provided documentary proof of her payment to creditor 3.a. (AE AA) She documented progress with a payment plan with creditor 3.d with her payment of \$199 in November 2012. (AE CC; Tr. 47-48) And she provided documentary proof of her settlement arrangements (with monthly payment terms) with creditors 3.b, and 3.i. (AEs Y-Z; Tr. 44-46) This leaves only her creditor 3.h home equity loan as a debt still to be resolved.

Shortly after their marriage (in August 2006), Applicant and her husband jointly purchased a home for over \$400,000. (GE 3) They financed their purchase with a \$403,640 first mortgage. They opened a home equity line of credit with another lender in April 2007 in the amount of \$25,625. (GE 3)

After their separation in 2008, Applicant moved out of their residence and ceased receiving billings on their two mortgages. (GEs 3 and 5 and AE GG) In their 2009 divorce

agreement, Applicant quitclaimed her one-half interest in their residence to her second husband; she remained jointly obligated for the entire mortgage debt in the event he defaulted in his mortgage payments. (AE L; Tr. 43-44, 48) Credit reports reveal that the mortgages on her residence became delinquent by March 2009. (GEs 2 and 3)

Without any advance discussions with Applicant, her second husband petitioned for Chapter 7 bankruptcy relief in December 2009 and scheduled his interests in their home mortgages. (AE GG; Tr. 48-49, 59-60) He received his bankruptcy discharge in February 2010. (AE GG; Tr. 49, 57-58) Credit reports reveal that the first mortgage lender foreclosed its first mortgage interest in September 2010. (GE 8) In September 2011, the second mortgage holder offered Applicant the opportunity to settle the deficiency balance owing on the loan for \$2,771. (AE GG) Applicant declined the offer and heard nothing further from the lender. (AE GG)

Having quitclaimed her one-half interest in their home to her former husband, Applicant doesn't believe she should be liable for any remaining deficiency on the home equity line of credit. (Tr. 58) When she talked to the representative of the second trust deed holder, this representative told her that the deficiency debt on the second mortgage was discharged in her ex-husband's bankruptcy and no longer could be addressed with Applicant. (Tr. 58)

In October 2012, Applicant completed a counseling program designed to assist her in achieving her financial goals and creating a budget. (AE A) She reports assets of \$97,092 that are comprised mainly of her vehicles, her 401(k) plan, and her life insurance policy. (AE U) In a personal financial statement she completed in March 2012, she reported net monthly income of \$4,096, monthly expenses of \$3,625, a monthly auto debt of \$359, and a net monthly remainder of \$112. (GE 7) Her monthly expenses included her listed costs (\$299 a month) of supporting her daughter, whom she raises as a single mother. Applicant listed total liabilities of \$37,589 that included her home equity credit line and her auto loans. (AE U) And she reported a current net worth of \$59,502. (AE U) She receives \$404 a month in child support from her ex-husband, but no other financial support from him. (Tr. 39, 63)

### **Endorsements**

Applicant is highly regarded by her former training manager, former supervisor, and colleagues, both current and past. (AEs B-C, E-F, and X; Tr. 27-36) They extol her judgment, communication skills, honesty, and integrity. (AEs B-C E-F, and X; Tr. 27-28, 34) Applicant's ex-father-in-law described her as a loving mother and wife of his son before their separation. (AE D) One close friend from her Marine command cited instances where Applicant supported the former's young daughter when she became ill and credits Applicant with dedication to her job, family, and friends as a testament of her loyalty, trustworthiness, and good character. (AE X)

Applicant provided performance reviews covering the calendar years of 2007 through 2010. (AEs P-T) They reflect solid ratings for the years under review. Applicant

earned numerous commendations and certificates of appreciation recognizing her many military and civilian contributions. (AE N)

## **Policies**

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns." These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c)

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the revised AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. "[S]ecurity-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988). And because all security clearances must be clearly consistent with the national interest, the burden of persuasion must remain with the Applicant.

Viewing the issues raised and evidence as a whole, the following adjudication policy concerns are pertinent herein:

### **Drug Involvement**

*The Concern:* 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. AG ¶ 24.

### **Personal Conduct**

*The Concern:* Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. AG ¶ 15.

### **Financial Considerations**

*The Concern:* 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts. AG ¶ 18.

### **Burden of Proof**

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. "[S]ecurity-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988). And because all security clearances must be clearly consistent with the national interest, the burden of persuasion must remain with the Applicant.

### **Analysis**

Applicant is a highly regarded project specialist who presents with a history of marijuana she used to self-medicate while she was being treated for pain issues. Principal security issues in this case center on Applicant's use of marijuana for a brief period while holding a security clearance. These concerns raise trust questions covered by Guidelines H and E. Additional security concerns are raised over Applicant's accumulation of delinquent debts, some related to her marriage.

#### **Drug concerns**

Over a 15-month period between December 2006 and March 2008, Applicant self-medicated with marijuana twice a week for pain relief following stroke-related complications. Applicant's admissions to using federally-illegal drugs raise initial security concerns over risks of recurrence as well as judgment issues. On the strength of the evidence presented, three disqualifying conditions of the AGs for drug abuse are applicable: Disqualifying Condition (DC) ¶ 25(a), "any drug abuse;" DC ¶ 25(c), "illegal possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;" and DC) ¶ 25(g), "any illegal drug use after being granted a security clearance."

Applicant turned to marijuana use for medicinal reasons to supplement the pain medications she was prescribed by her treating medical providers. To be sure, medically-prescribed marijuana use was legal under the laws of Applicant's state at the time she was using the drug. Known as the Compassionate Use Act, C Health & Safety



Code, ¶ 11362.5 (2005) (CUA), this legislation was designed to implement the key enabling provisions of Proposition 215, under ¶¶ 11362.5 *et seq.*

Proposition 215 was passed by the state's voters in 1996 to validate the right of residents of the state to possess and use marijuana for medical purposes, when they have a recommendation from a licensed physician. Proposition 215 gives the patient's primary care-giver the right to cultivate and possess marijuana for the patient. Why Applicant never sought prescribed marijuana use for medicinal purposes from any of her treating providers is unclear. Having failed to obtain a medical prescription for the medicinal use of marijuana, she cannot claim the full benefit of the Proposition's protections.<sup>2</sup>

To her credit, Applicant has made noticeable gains in her efforts to mitigate her past marijuana use. Her efforts have included medical counseling, drug testing, divorce (separating from her ex-husband who introduced her to marijuana), and a lengthy period of sustained abstinence without any exhibited susceptibility to resumption. On the strength of her abstinence efforts, she may fully invoke MC ¶ 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;" MC ¶ 26(b)(1), "disassociation from drug-using associates and contacts;" MC ¶ 26(b)(2), "changing or avoiding the environment where drugs were used;" and MC ¶ 26(b)(4), "a signed statement of intent with automatic revocation of clearance for any violation," to the merits of her situation.

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Moreover, marijuana use, even for prescribed medicinal purposes, has never been immune to federal prosecution for violation of the Controlled Substances Act (CSA) (21 U.S.C. ¶¶ 801 *et seq.*) under the federal government's concurrent jurisdiction over manufacturing, distributing, and possessing illegal drugs. The CSA that bars the manufacture, distribution, and possession of various drugs, including marijuana, has no medical benefits worthy of any exception outside of the narrow confines of government-approved research. *See United States v. Oakland Cannabis Buyers and Jeffrey Jones*, 532 U.S. 483 (2001) Without any sustainable marijuana medical exception to employ, the Supreme Court used its federal jurisdictional authority to preserve the reach of the CSA over illegal drug manufacturing, distributing, and possession.

*Oakland Cannabis Buyers* did not attempt to invalidate the CUA. More recently, the Supreme Court seized the opportunity to refine and clarify the reach of its holding in *Oakland Cannabis Buyers*, *supra*. In *Raich v. Gonzales*, 545 U.S. 1, 814 (2005), the Court addressed the claims of two state residents who suffered from a variety of serious medical conditions and have sought to avail themselves of medical marijuana pursuant to the terms of their state's CUA. and destroyed all six of the respondent's cannabis plants. In *Raich*, the Court held that the regulation of marijuana activity under the CSA was fully within Congress' commerce power (U. S. Const. , art. 1, ¶ 8), because marijuana production intended for home production could have a substantial effect on supply and demand in the national market. The *Raich* Court reasoned that federal failure to regulate the intrastate manufacturing and possession of marijuana would leave a considerable gap in the CSA., and, in turn, vacated the Ninth circuit's judgment. *See id.*

Further, Applicant has exhibited candor about her marijuana usage and her ex-husband's use recommendations based on his own medicinal use. Applicant's assurances that her drug usage was a temporary self-medicating activity she will not repeat are encouraging and enough under the circumstances to facilitate safe predictions that she is not a recurrence risk.

From a whole-person perspective, Applicant has established independent probative evidence of her overall honesty, trustworthiness, and understanding of DOD policy constraints on the use of illegal substances. She offered enough positive reinforcements to facilitate safe predictions she is not a recurrence risk.

Considering the record as a whole, at this time there is sufficient probative evidence of sustainable mitigation to make predictable judgments about Applicant's ability to avoid drugs and related activities in the foreseeable future. Taking into account all of the facts and circumstances surrounding Applicant's established drug activities over a 15-month period, she mitigates security concerns with respect to the allegations covered by subparagraphs 1.a and 1.b of the SOR.

### **Personal conduct concerns**

Judgment concerns exist over Applicant's continued drug use while holding a security clearance (i.e, between December 2006 and March 2008) Her marijuana use, even for medicinal purposes, reflects both judgment lapses and disregard of the DOD's rules and policies for clearance holders. Questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations, are each core policy concerns of the personal conduct guideline (AG ¶ 15) Applicant's actions are expressly covered by Guideline E, and are entitled to independent cognizance under this Guideline according to the Appeal Board. See ISCR Case No. 06-20964, at 6 (App. Bd. April 10, 2008).

Where (as here) there is additional probative adverse information covered by Guideline E that is not covered by Guideline H, and *vice versa*, and which reflects a recurring pattern of questionable judgment, irresponsibility, or emotionally unstable behavior, independent grounds do exist for considering questionable judgment and trustworthiness allegations under Guideline E as well as Guideline H. Authority for considering overlapping conduct under both guidelines is contained in the guidance provided in Enclosure 2, ¶ 2(d) of the Directive's August 2006 amendments.

So, under Guideline E, core judgment and trustworthiness concerns covered by D.C. ¶ 16(d), "credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information," have some applicability to this case. Applicant's use of marijuana while holding a security

clearance between December 2006 and March 2008 also invites application of DC ¶ 16(d)(3), “a pattern of dishonesty or rule violations.”

Noteworthy, Applicant fully disclosed her drug use in the e-QIP she completed and was candid about her awareness of the Government’s anti-drug policies when later queried by the OPM agent who interviewed her in December 2009. MC ¶ 17(d), “the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur,” applies to Applicant’s situation.

In evaluating all of the circumstances surrounding Applicant’s marijuana usage while employed by a defense contractor with a known Government-sanctioned anti-drug policy, her explanations, and whole-person considerations, her good-faith disclosures are sufficient to enable her to convincingly refute or mitigate personal conduct concerns associated with her drug use. Overall, Applicant’s explanations are persuasive enough to warrant conclusions that her judgment lapses associated with her continuing drug use while employed by an employer with a known Government-sanctioned anti-drug policy is mitigated. Favorable conclusions are warranted with the respect to the allegations covered by subparagraph 2.a of the SOR.

### **Financial concerns**

Applicant’s accumulation of debts and a mortgage delinquency stemming from her ex-husband’s bankruptcy and joint responsibility for the mortgage raise potential security concerns about her judgment, reliability, and trustworthiness in managing her finances. Her actions warrant the application of two of the disqualifying conditions (DC) of the Guidelines ¶ DC 19(a), “inability or unwillingness to satisfy debts,” and ¶19(c) “a history of not meeting financial obligations.”

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder’s demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in financial cases.

An unexpected separation and divorce left Applicant a single parent with no material assistance from her ex-husband, who filed for Chapter 7 bankruptcy relief in 2009. Before petitioning for bankruptcy protection, Applicant’s ex-husband failed to notify Applicant of any pending mortgage delinquencies and failed to address either of the jointly created mortgage debts covering the property quitclaimed by Applicant the previous year. At the time, Applicant had no knowledge of any mortgage delinquencies or her ex-husband’s intentions to resolve his own mortgage obligations through a bankruptcy discharge.

These cited extenuating circumstances and Applicant's own continuing efforts to work with her creditors in paying off her listed debts merit application of three of the mitigating conditions for financial considerations: MC ¶ 20(b), "the conditions that resulted in the behavior 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;" MC ¶ 20(c), "the person has received counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;" and MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."

In circumstances similar to the present case, the Appeal Board has said that an applicant need not have paid or resolved every one of his proven debts or addressed all of his debts simultaneously. What Applicant needs is a credible plan to resolve his financial problems, accompanied by significant implementing actions. See ISCR Case No. 07-06482 (App. Bd. May 21, 2008)

By the proofs presented, Applicant has made considerable progress to date with most all of her listed debts. What she has not been able to address is the home equity loan default covering the home she quitclaimed to her ex-husband. But she is committed to resolving even this obligation should the lender look to her for deficiency responsibility.

Since making an initial settlement offer in 2011, the lender has made no contact with Applicant or demands for payment of any deficiency balance on its junior mortgage following the first mortgagee's foreclosure of its mortgage on the residence owned by Applicant and her ex-husband. Any deficiency balance covered by the second mortgage on the residence has never been fully detailed to Applicant and currently is either barred, or close to non-enforcement status thereto, by her state's controlling statute of limitations. See § 337 of CC. This limitation period for written contracts and open-ended accounts (like credit card debts) is four years. When applied, the state statute bars enforcement of debts over four years delinquent. So, whatever deficiency rights were retained by creditor 3.h following her ex-husband's bankruptcy discharge and the first mortgagee's ensuing foreclosure of its mortgage interest in the property under the foreclosure procedures covered by CCP, § 580b, these rights are likely now time-barred or close to non-enforcement status thereto.

Applicant is a highly-regarded project specialist that produces enough income for herself to cover her family needs and debts. She retains considerable assets through her 401(k) plan and life insurance policies. She lives modestly and within her means and commits to resolving any remaining debts demanded of her by existing creditors.

Applicant has not asked for statute of limitations protection, and it is generally not available to her in any case under Appeal Board guidance. Over time, the Appeal Board has shown general consistency in disallowing applicant claims to mitigation

based on charge-offs and limitation bars on debts previously unpaid due to cited extenuating circumstances. *Cf.* ISCR Case No. 07-16427 at 3-4 and n.6 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-01122 at 5 and n. 3 (App. Bd. Feb. 9, 2009) But considering the special circumstances here of Applicant's quitclaiming her interest in the underlying residence to her ex-husband as a part of their divorce settlement, and her justifiable reliance on him to take care of the mortgages on the property, the employment of statute of limitations relief here to afford Applicant a clean bill of financial health is entirely appropriate.

Applicant is a highly-regarded project specialist that produces enough income for herself to cover her family needs and debts. She retains considerable assets through her 401(k) plan and life insurance policies. She lives modestly and within her means and commits to resolving any remaining debts demanded of her by existing creditors. Based on Applicant's good payment history before her spousal separation and ensuing divorce, and her earnest efforts to pay off her creditors while functioning as a single mother, she demonstrates solid prospects for sustaining her recovery efforts in the foreseeable future and stabilizing her finances. Her only remaining delinquent debt stems from a deficiency arising from the foreclosure of her once jointly-owned residence preceding her divorce.

Consideration of Applicant's military and civilian achievements, her medical issues, her separation and divorce, the extenuating circumstances associated with her home equity loan and ensuing default, her current income and net worth status, and the documented affirmative steps she has taken to resolve her debts since her divorce was finalized permit a favorable assessment of her overall good judgment, reliability, and trustworthiness. Applicant's proofs provide sufficient credible indicators of her ability to be trusted in times of financial stress and enable her to satisfy her evidentiary burden of mitigating the covered debts.

From a whole-person standpoint, the evidence is substantial that Applicant has performed well during her military and civilian service and is entitled to considerable credit for her military/civilian contributions. Unfortunate economic circumstances played a pivotal role in her inability to keep up with her accumulated debts after separation and divorce. Her earnest repayment efforts and overall stabilization of her finances over the past year are sufficient to meet mitigation requirements imposed by the AGs governing her finances.

### **Formal Findings**

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions, and the factors and conditions listed above, I make the following separate formal findings with respect to Applicant's eligibility for a security clearance.

GUIDELINE H:

FOR APPLICANT

Subparas. 1.a and 1.b:

For Applicant

GUIDELINE E:

FOR APPLICANT

Subpara. 2. a:

For Applicant

GUIDELINE F:

FOR APPLICANT

Subparas. 3.a through 3.l

For Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

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Roger C. Wesley  
Administrative Judge