



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



In the matter of:

Applicant for Public Trust Position

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ADP Case No. 14-01246

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

12/12/2014

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the trustworthiness concerns regarding financial considerations, drug involvement, criminal conduct, or personal conduct. Eligibility to occupy an Information Systems Position designated ADP I/II/III (public trust position) is denied.

Statement of the Case

On April 6, 2007, Applicant applied for a public trust position and submitted a Questionnaire for Public Trust Positions (SF 85P).¹ On January 25, 2013, she submitted an Electronic Questionnaire for Investigations Processing (E-QIP).² On June 5, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility – Division A (CAF) issued a Statement of Reasons (SOR) to her, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and

¹ Government Exhibit 1 ((SF 85P), dated April 6, 2007).

² Government Exhibit 2 ((e-QIP), dated January 25, 2013).

modified (Directive); and *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (effective within the Department of Defense on September 1, 2006) (AG) for all adjudications and other determinations made under the Directive. The SOR alleged trustworthiness concerns under Guidelines F (Financial Considerations), H (Drug Involvement), J (Criminal Conduct), and E (Personal Conduct), and detailed reasons why the DOD adjudicators could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's eligibility for occupying an Information Systems Position designated ADP I/II/III to support a contract with the Department of Defense, and recommended referral to an administrative judge to determine whether such eligibility should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on June 18, 2014. In a written statement, notarized on July 28, 2014, Applicant responded to the SOR allegations, but failed to indicate whether or not she wanted a hearing before an administrative judge. On August 18, 2014, pursuant to ¶ E3.1.7., Additional Procedural Guidance, Encl. 3, the Directive, Department Counsel requested a hearing.³ He indicated the Government was prepared to proceed on September 15, 2014, and the case was assigned to another administrative judge on September 29, 2014. A Notice of Hearing was issued on October 1, 2014, scheduling the hearing for October 23, 2014. Unspecified issues arose and Applicant was unable to appear at that scheduled hearing, and it was postponed. The case was reassigned to me on October 24, 2014. A new Notice of Hearing was issued on October 28, 2014, scheduling the hearing for November 20, 2014, but to accommodate Applicant, on October 31, 2014, an Amended Notice of Hearing was issued rescheduling the hearing for November 19, 2014. I convened the hearing, as scheduled.

During the hearing, five Government exhibits (GE 1 through GE 5) were admitted into evidence, without objection. Applicant testified, but offered no exhibits. The transcript (Tr.) was received on December 2, 2014.

Findings of Fact

In her Answer to the SOR, Applicant admitted all of the factual allegations pertaining to financial considerations (¶¶ 1.a. through 1.l.) and drug involvement (¶¶ 2.a. and 2.b.) of the SOR. She failed to address the criminal conduct allegation (¶ 3.a.), and she denied the factual allegations related to personal conduct (¶¶ 4.a. through 4.f.).

Applicant is a 30-year-old employee of a defense contractor, and she is seeking to retain her eligibility for occupying an Information Systems Position as a customer service advocate to support a contract with the Department of Defense. She has no prior military service.⁴ A May 2003 high school graduate,⁵ with about two and one-half

³ Joint Exhibit I (Letter, dated August 18, 2014).

⁴ Government Exhibit 2, *supra* note 2, at 15.

⁵ GE 1, *supra* note 1, at 2; Tr. at 21.

years of college and vocational courses,⁶ she has worked in a variety of positions since 2008. She was unemployed from June 2005 until April 2007 when she became pregnant with her first child and became a stay-at-home mother.⁷ She was also fired for excessive absenteeism in July 2011, and was unemployed from that point until February 2013.⁸ She joined her current employer in February 2013.⁹ Applicant has never been married.¹⁰ She has a daughter born in 2005 and a son born in 2011.¹¹

Financial Considerations

It is unclear when Applicant initially started experiencing financial difficulties. During her period of unemployment associated with the birth of her first child, she remained at home receiving unemployment compensation.¹² She does not, and did not, receive any monetary assistance from the child's father.¹³ In April 2007, when she completed her SF 85P, she indicated she was not currently over 180 days delinquent on any loan or financial obligation.¹⁴

(SOR ¶¶ 1.a. through 1.l.): A review of Applicant's February 2013 credit report indicates that as early as 2006 she had a number of accounts that were delinquent. Some accounts had been charged off and others had been placed for collection.¹⁵ The SOR identified 12 purportedly continuing delinquencies, as reflected by the 2013 credit report and another more recent credit report,¹⁶ totaling approximately \$11,896. Four of those accounts were charged off, and one of those four accounts was for an automobile that was repossessed.¹⁷ Applicant has made no effort to contact any of the creditors listed in the SOR to set up repayment arrangements, and has made no payments on any of those accounts.¹⁸ None of the accounts have been resolved.

⁶ GE 2, *supra* note 2, at 9-10; GE 1, *supra* note 1, at 2; Tr. at 5, 20.

⁷ Tr. at 21-22.

⁸ GE 2, *supra* note 2, at 10; Tr. at 25-26.

⁹ Tr. at 25-26.

¹⁰ GE 2, *supra* note 2, at 17.

¹¹ GE 2, *supra* note 2, at 18-19.

¹² Tr. at 70.

¹³ Tr. at 70.

¹⁴ GE 1, *supra* note 1, at 7.

¹⁵ GE 4 (Combined Experian, TransUnion, and Equifax Credit Report, dated February 6, 2013).

¹⁶ GE 5 (Equifax Credit Report, dated March 6, 2014).

¹⁷ Tr. at 59.

¹⁸ Tr. at 58-63.

In addition to the delinquent accounts listed in the SOR, Applicant has a number of student loans, totaling about \$30,000, that were deferred, but which are now delinquent.¹⁹ She claimed she contacted the creditors associated with the student loans,²⁰ but did not specify what she had accomplished in doing so.

Applicant rented a separate residence from January 2004 until August 2005, but to reduce expenses, she moved back into her parents' residence.²¹ Applicant's 65-year-old father no longer works,²² and her 60-year-old mother works several hours per day, five days a week.²³ With Applicant's salary of about \$1,200 per month,²⁴ the combined family income "barely make[s] ends meet."²⁵ Nevertheless, once her financial priorities are met (a roof over their head, food on the table, and children and parents are cared for), it is Applicant's intention to pay her bills, with a primary focus made on her student loans.²⁶ Applicant has never received financial counseling.²⁷

Drug Involvement and Criminal Conduct

(SOR ¶¶ 2.a. and 2.b., and 3.a.): Applicant used marijuana intermittently, generally every other weekend or on a weekly basis, from about 2001 to at least February 2012.²⁸ In late 2007, she was administered a urinalysis by her employer, but she failed the test and was terminated.²⁹ In February 2012, while driving with her brother and one of her children's fathers, they were stopped by the police and charged with possession of 28 grams or less marijuana/10 grams or less hash 1st, possession of a controlled substance in Schedule I to V 2nd or more, and prisoner/contraband O/T illegal drugs/weapons.³⁰ After being arrested, handcuffed, and spending the night in jail, she was released on bond and eventually went to court. She was represented by an attorney and entered a plea of guilty to possession of marijuana. Applicant was entered into a pretrial intervention program, which included 40 hours of community service and a

¹⁹ Tr. at 65-66.

²⁰ Tr. at 58, 64-66.

²¹ GE 2, *supra* note 2, at 7-8.

²² Tr. at 55.

²³ Tr. at 55.

²⁴ Tr. at 27.

²⁵ Tr. at 55-56.

²⁶ Tr. at 64.

²⁷ Tr. at 66.

²⁸ Applicant's Answer to the SOR, dated July 28, 2014, at 2; Tr. at 28-29, 32.

²⁹ Tr. at 23-24, 29.

³⁰ Applicant's Answer to the SOR, *supra* note 28, at 2; GE 3 (Federal Bureau of Investigation (FBI) Identification Record, dated February 6, 2013).

prison tour, and was fined \$350.³¹ She completed the program in February 2013.³² Applicant resumed the use of marijuana, on at least one occasion, in late December 2013 or early January 2014.³³ In about September 2014, Applicant was at a friend's house watching television while a friend of her friend was using an unspecified illegal drug.³⁴

Applicant has never been diagnosed or evaluated for drug abuse or drug dependence.³⁵ She never participated in drug treatment or drug counseling.³⁶

Personal Conduct

(SOR ¶ 4.a.): On April 6, 2007, when Applicant completed her SF 85A, she responded to a question pertaining to drug use. The question in Section 21A asked if, in the last year, she had illegally used any controlled substance, including marijuana. Applicant answered the question with “no.”³⁷ She certified that the response was “true, complete, and correct” to the best of her knowledge and belief. Her response to the question was false, for Applicant concealed her marijuana use during the period from about 2001 to at least the date she completed the SF 85A because that use continued for several years thereafter. Although, in her Answer to the SOR, Applicant denied intending to falsify her response, during the hearing she was unable to explain why she answered the question as she did.³⁸

(SOR ¶ 4.b.): On January 17, 2013, when Applicant completed her e-QIP, she again responded to a question pertaining to drug use. The question in Section 23 asked if, in the last seven years, she had illegally used any drugs or controlled substances. Applicant answered the question with “no.”³⁹ She certified that the response was “true, complete, and correct” to the best of her knowledge and belief. Her response to the question was false, for Applicant again concealed her marijuana use during the seven-year period leading up to the date she completed the e-QIP. Although, in her Answer to the SOR, Applicant denied intending to falsify her response, during the hearing she

³¹ Tr. at 34.

³² Tr. at 34.

³³ Tr. at 41-43.

³⁴ Tr. at 45-46.

³⁵ Tr. at 44-45.

³⁶ Tr. 45.

³⁷ GE 1, *supra* note 1, at 7.

³⁸ Tr. at 31-32.

³⁹ GE 2, *supra* note 2, at 23.

admitted she concealed her marijuana use because she feared the truth would jeopardize her chances of employment.⁴⁰

(SOR ¶¶ 4.c. through 4.e.): In that same e-QIP, Applicant responded to other questions pertaining to her police record. The questions in Section 22 asked if, in the last seven years, she had been arrested by any police officer or other type of law enforcement official; or been charged, convicted, or sentenced of a crime in any court; and if she had EVER been charged with an offense involving alcohol or drugs. [emphasis in original] Applicant answered “no” to the questions.⁴¹ She certified that the responses were “true, complete, and correct” to the best of her knowledge and belief, but the responses to those questions were, in fact, false. Applicant had been arrested, charged, and convicted for possession of marijuana only one year before she completed the e-QIP. Although, in her Answer to the SOR, Applicant denied intending to falsify her responses, during the hearing she offered several differing responses, including she thought she had answered “yes,” she did not have a printer when she completed the form, and “there is no explanation.”⁴²

(SOR ¶ 4.f.): In that same e-QIP, Applicant responded to a question pertaining to her financial record. The question in Section 26 asked if she was currently over 120 days delinquent on any debt. Applicant answered “no” to the question.⁴³ She certified that the response was “true, complete, and correct” to the best of her knowledge and belief, but the response to that question was, in fact, false for Applicant had concealed multiple accounts that were either placed for collection or were over 120 days delinquent. Although, in her Answer to the SOR, Applicant denied intending to falsify her response, during the hearing she offered only the comment that “there is no explanation for that.”⁴⁴

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.”⁴⁵ 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. Positions designated as ADP I/II/III are classified as “sensitive positions.”⁴⁶ “The standard that must be met for . . . assignment to sensitive duties is

⁴⁰ Tr. at 37.

⁴¹ GE 2, *supra* note 2, at 22-23.

⁴² Tr. at 35-36.

⁴³ GE 2, *supra* note 2, at 25.

⁴⁴ Tr. at 38.

⁴⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁴⁶ Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.

that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security."⁴⁷ Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.⁴⁸

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for a public trust position.

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

In the decision-making process, facts must be established by "substantial evidence."⁴⁹ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.⁵⁰

A person who seeks access to sensitive information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation

⁴⁷ *Id.* at ¶ C6.1.1.1.

⁴⁸ *See Id.* at ¶ C8.2.1.

⁴⁹ "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

⁵⁰ *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

as to potential, rather than actual, risk of compromise of sensitive information. Furthermore, security clearance determinations, and by inference, public trust determinations, should err, if they must, on the side of denials.”⁵¹ In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline F, Financial Considerations

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

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

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), *an inability or unwillingness to satisfy debts* is potentially disqualifying. Similarly, under AG ¶ 19(c), *a history of not meeting financial obligations* may raise security concerns. As noted above, Applicant’s February 2013 credit report indicates that as early as 2006 she had a number of delinquent accounts. Some of her accounts were placed for collection, a vehicle was repossessed, and several accounts had been charged off. With insufficient funds to make her monthly payments, Applicant’s accounts fell deeper into delinquency. With the exception of her student loan servicing agents, she made no effort to contact her other creditors to resolve her accounts. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where *the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment*. Also, under AG ¶ 20(b), financial security concerns may be mitigated where *the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances*. Evidence that *the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control* is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows

⁵¹ *Egan*, 484 U.S. at 531.

*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*⁵²

AG ¶ 20(b) minimally applies, but ¶¶ 20(a), 20(c), and 20(d) do not apply. The conditions that may have contributed to Applicant's initial financial problems were her unemployment during June 2005 until April 2007 when she was pregnant and chose to become a stay-at-home mother, living on unemployment compensation. Another period of unemployment was not beyond her control for it occurred when she was fired for testing positive for drug abuse. Over the years, Applicant did not act aggressively, timely, or responsibly to resolve her delinquent debts. She never contacted any of her creditors and failed to initiate any effort, much less a "good-faith effort," to start repaying any of her creditors before the hearing. Instead, she ignored her debts and continues to do so. She never received any financial counseling. Applicant failed to act responsibly under the circumstances.⁵³

Guideline H, Drug Involvement

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

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

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

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of

⁵² The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

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

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

⁵³ "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999)).

1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and

(2) inhalants and other similar substances;

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

The guideline notes several conditions that could raise security concerns. Under AG ¶ 25(a), *any drug abuse (see above definition)*, is potentially disqualifying. Similarly, under AG ¶ 25(c), *illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia*, may raise security concerns.

Applicant used marijuana intermittently, generally every other weekend or on a weekly basis, from about 2001 to at least February 2012. In late 2007, she was terminated from her employment by her employer after testing positive on a urinalysis. In February 2012, she was arrested for, and eventually entered a plea of guilty to possession of marijuana. She resumed the use of marijuana, on at least one occasion, in late December 2013 or early January 2014. AG ¶¶ 25(a) and 25(c) have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from drug involvement. Under AG ¶ 26(a), the disqualifying conditions may be mitigated where *the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*. Under AG ¶ 26(b), drug involvement concerns may also be mitigated where there is *a demonstrated intent not to abuse any drugs in the future, such as:*

(1) *disassociation from drug-using associates and contacts;*

(2) *changing or avoiding the environment where drugs were used;*

(3) *an appropriate period of abstinence;*

(4) *a signed statement of intent with automatic revocation of clearance for any violation.*

AG ¶¶ 26(a) and 26(b) do not apply. Applicant's marijuana abuse occurred from about 2001 to at least February 2012, and resumed again in December 2013 or January 2014. She was fired for marijuana use in 2007 and convicted of marijuana possession in 2012. Applicant has never received any medical treatment or counseling related to the substance abuse, and she has never been evaluated or diagnosed for substance abuse or dependence. While Applicant now intends to refrain from such use in the future, she failed to abstain after her 2007 firing and following her 2012 conviction. As evidenced by her September 2014 incident during which she was watching television with a friend and

a friend of that friend was using an unspecified drug, she has not established a disassociation from drug-using associates and contacts. Instead of simply remaining in that environment, she should have excused herself and departed. Also, Applicant has never submitted a signed statement of intent with automatic revocation of clearance for any future violation. In the absence of positive character evidence, the uncertainty established by her past failures to abstain, continues to cast doubt on Applicant's reliability, trustworthiness, or good judgment.

Guideline J, Criminal Conduct

The security concern under the guideline for Criminal Conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 31(a), *a single serious crime or multiple lesser offenses* is potentially disqualifying. Also, a security concern may be raised under AG ¶ 31(c), when there is an *allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted*. As noted above, Applicant's marijuana abuse occurred from about 2001 to at least February 2012, and resumed again in December 2013 or January 2014. She was convicted of marijuana possession in 2012. AG ¶¶ 31(a) and 31(c) have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from criminal conduct, but none of those conditions apply.

Guideline E, Personal Conduct

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

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

The guideline notes several conditions that could raise security concerns. The *deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*, may raise security concerns under AG ¶ 16(a).

Applicant's omissions and concealments in her responses to inquiries during the completion of her 2007 SF 85P and her 2013 e-QIP of information pertaining to her criminal conduct, substance abuse, police record, and financial record, provide sufficient evidence to examine if Applicant's answers and comments were deliberate falsifications pertaining to critical information, as alleged in the SOR, or were the result of confusion or misunderstanding on her part. I had ample opportunity to evaluate the demeanor of Applicant, observe her manner and deportment, appraise the way in which she responded to questions, assess her candor or evasiveness, read her statements, and listen to her testimony. Applicant's explanations, where there were explanations, regarding those answers were not supportive of any possible mistakes to dissuade me from concluding her true intentions at the times she completed those applications. My conclusion is supported by her admission that she concealed her marijuana use in the e-QIP because she feared the truth would jeopardize her chances of employment. AG ¶ 16(a) has been established.⁵⁴

The guidelines also include examples of conditions that could mitigate security concerns arising from personal conduct, but none of those conditions apply.

Whole-Person Concept

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

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

⁵⁴ The Appeal Board has explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

There is some evidence in favor of mitigating Applicant's conduct. She is apparently a helpful daughter to her parents and a good parent to her children.

The disqualifying evidence under the whole-person concept is more substantial. Applicant was a substance abuser whose relatively frequent use of marijuana over a rather lengthy period was not diminished by being fired for a positive urinalysis in 2007 or by being convicted of possession of marijuana in 2012. She resumed her use of marijuana in December 2013 or January 2014. When asked to complete applications for a public trust position in 2007 and again in 2012, she falsified her responses to several questions pertaining to her criminal conduct, substance abuse, police record, and financial record. Applicant generally ignored her creditors and did not make any efforts to pay them. Her long-standing failure to repay creditors, at least in reasonable amounts, or to arrange payment plans, as well as her repeated use of marijuana, and her falsifications, reflect traits which raise concerns about her fitness to hold a position of public trust. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

Overall, the record evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant has failed to mitigate the security concerns arising from her financial considerations, drug involvement, criminal conduct, and personal conduct.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant

Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Paragraph 4, Guideline E:	AGAINST APPLICANT
Subparagraph 4.a:	Against Applicant
Subparagraph 4.b:	Against Applicant
Subparagraph 4.c:	Against Applicant
Subparagraph 4.d:	Against Applicant
Subparagraph 4.e:	Against Applicant
Subparagraph 4.f:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility to occupy an Information Systems Position to support a contract with the Department of Defense. Eligibility for public trust position is denied.

ROBERT ROBINSON GALES
Administrative Judge