



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-01783
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric H. Borgstrom, Esquire, Department Counsel  
For Applicant: *Pro se*

02/20/2015

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**Decision**

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant used marijuana on and off from 1992 to June 2014, including at times while she held a Department of Defense security clearance. She falsely denied any illegal drug involvement when she applied for a security clearance in October 2013. She no longer intends to use any marijuana, but it is too soon to conclude that her marijuana abuse will not reoccur. The drug involvement and personal conduct concerns are not mitigated. The financial considerations concern because of her alleged failure to file her state income tax return for tax year 2012 is mitigated. Clearance is denied.

**Statement of the Case**

On July 28, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant,<sup>1</sup> detailing the security concerns under Guideline H (Drug Involvement), Guideline E (Personal Conduct), and Guideline F (Financial Considerations), and explaining why it was unable to find that it is

<sup>1</sup> The SOR was issued to Applicant under her maiden name. She recently married, and her new name is reflected in the case caption.

clearly consistent with the national interest to grant or continue her security clearance eligibility. The DOD CAF took the action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant responded to the SOR allegations on August 13, 2014. She requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. On October 2, 2014, Applicant's case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for her. On October 27, 2014, I scheduled a hearing for November 19, 2014.

At the hearing, three Government exhibits (GEs 1-3) and one Applicant exhibit (AE A) were entered into evidence without any objections. Applicant testified on her behalf, as reflected in a transcript (Tr.) received on December 3, 2014.

### **Summary of SOR Allegations**

The SOR alleges under Guideline H that Applicant used marijuana approximately one to four times monthly from 1991 to December 2013 (SOR 1.a), including after she had been granted a DOD security clearance in 2003 (SOR 1.b), and that she expressed an intent to continue using marijuana (SOR 1.c). Under Guideline E, Applicant allegedly falsified her October 16, 2013 Electronic Questionnaire for Investigations Processing (e-QIP) by not disclosing her drug involvement (SOR 2.a) or that she had used marijuana while possessing a security clearance (SOR 2.b). Under Guideline F, Applicant was alleged to have failed to file her state income tax return and pay taxes owed for tax year 2012 (SOR 3.a) as of the issuance of the SOR in July 2014.

In a detailed Answer to the SOR allegations, Applicant admitted the use of marijuana between 1991 and December 2013, at times after she had been granted a security clearance, but not with the frequency alleged. She explained that there were extended periods of time without any marijuana use, including from 1994 to 1996 and while pregnant and nursing for a couple of years starting in 2001. Applicant admitted using marijuana one to four times per month when she was laid off from her defense contractor employment. Applicant denied that she had expressed intent to continue using marijuana indefinitely in the future. Concerning the alleged falsification of her e-QIP, Applicant acknowledged that she had lied because she was afraid she would lose her job. However, she volunteered her drug use at the start of her personal subject interview. About the state tax issue, Applicant indicated that she filed her 2012 state tax return on January 11, 2014, and paid the taxes owed on April 8, 2014, before the SOR was issued.

### **Findings of Fact**

Applicant's admissions to some illegal drug involvement and to the falsification of her October 2013 security clearance application are accepted and incorporated as findings

of fact. After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact.

Applicant is a 44-year-old high school graduate with some college and woodworking training. She has worked as a carpenter for her current employer, a defense contractor, on and off since March 2003. Applicant was laid off due to lack of work and then recalled several times over the next 11 years. (GEs 1, 2; Tr. 19-21.)

Applicant married a Nigerian citizen in July 2014. (Tr. 31.) They have a son, who was born in the United States in November 2001. Applicant sponsored her spouse's immigration to the United States, and he entered on a fiancé visa in June 2014. (GEs 1, 2; Tr. 44.)

Applicant started using marijuana in 1992, when she began working in promotions at a local casino. In 1993, she began using marijuana regularly, about once a week. She continued to use the drug with varying frequency until June 2014, on average once every few months, but at other times up to four times per month. She had some periods of abstinence varying from several months to two years. (GE 3; Tr. 24-26, 30-31.) Applicant used marijuana with friends, and she purchased the drug on occasion. (Tr. 30.) At times, she also operated a motor vehicle after smoking marijuana. (Tr. 41.)

Around 1995, Applicant tested positive for cannabis in a random drug screen. She was told by her employer, a casino, to seek treatment as a condition of her continued employment. Applicant attended weekly counseling between June 1995 and December 1995, but she did not consider it treatment. (GEs 1, 2; Tr. 27-28.)

Applicant resumed using marijuana with friends around 1997. (Tr. 28.) In October 1998, Applicant began working in customer service or phone sales. She attended college for visual arts for one semester, from December 1998 to June 1999. Her recreational use of marijuana continued until March 2001. She abstained from marijuana while pregnant and then nursing her son. (GEs 2, 3.)

On March 11, 2003, Applicant completed and certified to the accuracy of a security clearance application (SF 86) to work for her current employer. Applicant responded negatively to question 27 concerning whether she had illegally used any controlled substance, including marijuana, in the last seven years. (GE 2.) She was not using marijuana at that time, but she had smoked marijuana within the last seven years, and she knew that her denial of any drug use was false. (Tr. 29.) Applicant was granted a secret-level security clearance around October 2003. (GE 1; Tr. 22.) Applicant resumed using marijuana while possessing a security clearance. Applicant knew that illegal drug use while possessing a security clearance was prohibited, but she felt her marijuana use did not affect her job or threaten her clearance. (Tr. 32.) There were times when Applicant reported to work for the defense contractor after she had smoked marijuana, although she never used it at work. (Tr. 41-42.)

Applicant was laid off from her defense contractor job from November 2006 to February 2007, from April 2010 to June 2010, and from November 2011 to October 2012. Applicant worked as a home companion from May 2012 to October 2012, but during previous periods of layoff, she supported herself and her son on her unemployment benefits. (GEs 1, 3.) Applicant did not have taxes withheld from her unemployment compensation income in 2012, so when it came time to file her state income tax return in 2013, she owed taxes that she could not pay. (Tr. 22.)

When recalled to work by the defense contractor in October 2012, Applicant was detailed until December 2012 to a military shipyard. (GE 3.) On October 18, 2013, Applicant completed and certified an e-QIP to renew her security clearance eligibility. She responded negatively to inquiries concerning any illegal drug use in the last seven years and any illegal drug use ever while possessing a security clearance. She feared the loss of her employment if she disclosed her marijuana use. Applicant responded "Yes" to whether she had ever had counseling or treatment as a result of illegal drug use. She explained that she received treatment from June 1995 to December 1995 for marijuana use after she failed a random drug test while working at a casino. Applicant also responded affirmatively to inquiry concerning whether she had failed to file or pay any federal, state, or other taxes. She indicated that she had not filed her state income tax return or paid \$500 in overdue state income taxes for 2012 due to being laid off.<sup>2</sup> She expressed a plan to pay the tax debt in full. (GE 1.)

Applicant completed her e-QIP with the help of someone in her employer's security office. Applicant submitted her e-QIP knowing that she had concealed her marijuana use that occurred in the last seven years, and that she had used it while she held a DOD clearance. She regretted her lies because she had wanted to be upfront. (Tr. 45-46.) The next morning, she contacted her security office at work and indicated that she wanted to make a correction to her form, although she did not reveal what she wanted to change. Applicant was apparently told there was nothing she could do because her form had been submitted to the DOD. (Tr. 33, 39.) Applicant did not tell anyone in the security office about her marijuana use. (Tr. 38.) Applicant claims that some co-workers know about her drug use, but when asked for specifics, she responded, "Well, I'd rather not name names." (Tr. 38.)

Applicant was laid off on November 12, 2013, because of a lack of work. She used marijuana more frequently, up to four times a month, to cope with the stresses of waiting for her spouse's immigration and of her job layoff. (Tr. 40.)

On December 11, 2013, Applicant was interviewed by an Office of Personnel Management (OPM) investigator. (GE 3.) Applicant told the investigator upfront that she wanted to correct the record regarding her marijuana use. (Tr. 33.) They reviewed her e-QIP, and concerning the drug inquiries, Applicant "offered information regarding marijuana

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<sup>2</sup> Applicant's state income tax return for tax year 2012 would have been due in 2013. She was working full time for the defense contractor when that return would have been due. Applicant had been unemployed the previous spring, from November 2011 to May 2012, when she began working as a home companion until recalled to her defense contractor employment in October 2012.

use.” She indicated that she first used marijuana in the summer 1991 and that she last used it in December 2013. Applicant described the frequency of her marijuana use as one to four times per month, although she recalled abstaining from March 2001 to approximately 2003. She admitted that she obtained her security clearance when she was using marijuana. When asked whether she planned to continue to use marijuana, Applicant, who was laid off at the time, admitted that she had no plan at that time to cease her recreational use. (GE 3; Tr. 37.) Applicant denied that she could be blackmailed or coerced about her marijuana use. Her siblings knew about it. Apart from the counseling advised by the casino in 1995, Applicant denied adverse consequences of her drug abuse. Regarding her listed state income tax delinquency, Applicant explained that she had found it difficult to pay the debt because of being laid off. (GE 3.)

As of April 8, 2014, Applicant had filed her delinquent state income tax return for 2012 and made payments totaling \$1,399.60 to resolve her state income tax debt.<sup>3</sup> (AE A; Tr. 23.) Applicant filed her income tax return for 2012 with her timely return for 2013. (Tr. 23.)

Applicant was recalled to work by the defense contractor in January 2014, only to be laid off again from April 2014 to June 2014. Applicant used marijuana on at least two occasions after January 2014, including in June 2014 while she was visiting a friend. (Tr. 30-31, 35.) Marijuana had helped Applicant cope with feelings of anxiety in the past, and she smoked the drug to treat the anxiety caused by the potential loss of her employment should she be denied security clearance eligibility. (Tr. 35.) Applicant last purchased marijuana in December 2013. (Tr. 42.)

Applicant was recalled to work in June 2014. (Tr. 21.) She does not intend to use marijuana in the future. Her spouse does not use any marijuana. He knows Applicant has used marijuana, and he does not want her to use the drug. (Tr. 31, 38.) As of mid-November 2014, Applicant did not have any marijuana in her home, and she had found alternatives to marijuana, such as meditation, to cope with her anxiety. (Tr. 31, 38.) Applicant has told the friend, who was involved in her June 2014 marijuana use, that she does not intend to use marijuana again because her spouse disapproves and because of the concern about her security clearance eligibility. (Tr. 43.) Applicant’s job is very important to her. Her income supports the family while her spouse is looking for work. (Tr. 46.)

Applicant has not been suspended or reprimanded while working for her defense contractor employer. She has not committed any violations of security procedures. (Tr. 43.)

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<sup>3</sup> Applicant indicated when she responded to the SOR that she filed her delinquent state income tax return for 2012 on January 11, 2014, and that she satisfied her state tax debt on April 8, 2014. She discrepantly testified at her hearing that she filed her return and paid her state tax debt on the same day, April 8, 2014. (Tr. 23.) She provided documentation showing payment on April 8, 2014. (AE A.) Whether she submitted her return in January 2014 or April 2014, it has been filed.

## Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant’s eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline H, Drug Involvement

The security concern 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.

Under AG ¶ 24(a), drugs are defined as "mood and behavior altering substances," and include:

- (1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens),<sup>4</sup> and
- (2) inhalants and other similar substances.

Under AG ¶ 24(b), drug abuse is defined as "the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction." Disqualifying condition AG ¶ 25(a), "any drug abuse," applies because Applicant abused marijuana with varying frequency over the years from 1992 to June 2014. There were times where she abstained completely, such as when she was pregnant and nursing her son, but there were other times when she used marijuana up to four times a month. The evidence establishing AG ¶ 25(b), "testing positive for illegal drug use," is limited to a positive random drug screen in 1995, which led to six months of counseling to keep her job at the casino. AG ¶ 25(c), "illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia," applies because Applicant purchased marijuana on occasion, including as recently as December 2013. Furthermore, whereas Applicant used marijuana while she held a security clearance, knowing that such illegal drug use is prohibited, AG ¶ 25(g), any illegal drug use after being granted a security clearance," is also implicated.

The SOR also alleged that Applicant expressed intent to continue to use marijuana (SOR 1.c). When she answered the SOR in August 2014, Applicant denied that she had expressed intent to continue using marijuana "indefinitely." However, she admits that she had told the OPM investigator in December 2013 that she had no immediate plan to cease her marijuana use. The evidence shows that she used marijuana in June 2014, which is consistent with that intent. AG ¶ 25(h), "expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use," applies, although Applicant testified credibly in November 2014 that she has not used marijuana since June 2014 and no longer intends to use it in the future.

Mitigating condition AG ¶ 26(a), "the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment," is clearly not implicated. Notwithstanding periods of abstention lasting as long as two years at

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<sup>4</sup>Schedules I, II, III, IV, and V, as referred to in the Controlled Substances Act, are contained in 21 U.S.C. § 812(c). Marijuana is a Schedule I controlled substance.

times, Applicant's marijuana involvement cannot reasonably be characterized as infrequent. She used marijuana over a span of 22 years, at times recreationally with friends. She also used the drug to cope with anxiety. She used it as often as four times per month at times, including in late 2013 when she was laid off and anxious about her spouse's pending immigration and her lack of employment. Furthermore, Applicant used marijuana with a friend as recently as June 2014, which was not "so long ago."

Under mitigating condition AG ¶ 26(b), "a demonstrated intent not to abuse any drugs in the future" may be shown by the following:

- (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(b) is partially established in that Applicant's circumstances have changed since her last use of marijuana in June 2014. Most notably, her spouse immigrated to the United States in June 2014, and they married in July 2014. Applicant's spouse does not use marijuana, and he does not want Applicant to use the drug. Applicant has not shown that she has completely disassociated herself from the friends with whom she used marijuana. However, Applicant has informed the friend, who used the drug with her in June 2014, of her intent not to use any marijuana in the future. Applicant has not executed a signed statement of intent acknowledging that her security clearance would be revoked for any illegal drug use. However, under the advisement of potential criminal penalties for any false statement, she testified credibly that she does not intend to use any illegal drug in the future.

Applicant's willingness to commit to a drug-free lifestyle is evidence in reform. Nevertheless, after considering the recency of her resolve to cease her drug involvement, I find that the Government has legitimate concerns about whether Applicant will be able to abide by her stated intent. Her present abstinence of five months as of her hearing is very brief in comparison with her two decades of recreational drug use. She abstained for lengthier periods in the past only to resume using marijuana. Applicant used marijuana despite holding a security clearance and knowing that such drug use is prohibited. Applicant has used marijuana at times to cope with anxiety. While she has found meditation to be helpful of late, it is too soon to conclude that her drug abuse is safely in the past and will not reoccur. A longer period of abstinence is required for me to find that the drug involvement concerns are fully mitigated.

### **Guideline E, Personal Conduct**

The security concern 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.

Applicant does not dispute that she deliberately falsified her October 2013 e-QIP when she responded negatively to whether she had used any illegal drug in the last seven years and whether she had ever used any illegal drug while possessing a security clearance. AG ¶ 16(a) applies:

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

Furthermore, given that she feared the loss of her employment if she disclosed her marijuana use, AG ¶ 16(e) is also implicated:

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Although Applicant denied to the OPM investigator in December 2013 that she could be blackmailed or coerced because of her marijuana use, she admitted that she did not inform anyone in her security office about her drug use when she sought to rectify her false responses on the e-QIP. Applicant claimed that some co-workers know about her drug use, but when pressed, she responded, "Well, I'd rather not name names." She acknowledged that no one in the security department knew about her marijuana use.

About Applicant's attempt to rectify the record the day after she submitted her e-QIP in October 2013, it falls short of satisfying mitigating condition AG ¶ 17(a), "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts," when she did not identify for security personnel the nature of her desired correction. Applicant's disclosures of her marijuana involvement during her December 2013 OPM interview were without confrontation. To the extent that this rectification qualifies as a good-faith correction under AG ¶ 17(a), it was not sufficiently prompt when considering other evidence of record. Applicant concealed her marijuana use from the DOD when she initially applied for a security clearance in March 2003. She was granted a DOD secret-level security clearance around October 2003, apparently based on her false denial of any illegal drug use in the preceding seven years, and she made no effort to correct the record for the next 10 years.

Applicant had a clear opportunity to come forward about her illegal drug involvement when she completed her October 2013 e-QIP to renew her security clearance eligibility. Instead, she repeated her initial falsification and concealed her drug use. Although the Government did not allege the falsification of her initial SF 86, the DOHA Appeal Board has consistently held that non-alleged conduct may be considered to assess an applicant's credibility; to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant had demonstrated successful rehabilitation; to decide whether a particular provision of the Adjudicative Guidelines is applicable; or to provide evidence for a whole-person analysis under Section 6.3 of the Directive. *See, e.g.,* ISCR Case No. 09-07219 (App. Bd. Sep. 27, 2012); ISCR Case No. 03-20327 (App. Bd. Oct. 26, 2006). The recurrence of the falsification makes it difficult to mitigate the October 2013 e-QIP falsification under AG ¶ 17(c):

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

In her favor, Applicant acknowledges that she falsely concealed her use of marijuana when she completed both security clearance applications. She is remorseful about that conduct. She took positive steps to address the judgment concerns raised by her October 2013 e-QIP falsification by coming forward about her drug involvement during her December 2013 OPM interview. These steps in reform implicate AG ¶ 17(d):

(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.

By informing the DOD about her marijuana use, Applicant has also taken a positive step to minimize her vulnerability to coercion under AG ¶ 17(e), "the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress." Yet, Applicant's motivation in the falsifications was to protect her employment. She was not forthcoming with security personnel about the change that she wanted to make to her e-QIP in October 2013, and there is no evidence that her employer knows that she engaged in prohibited illegal drug use while holding a position of trust. The risk of Applicant concealing relevant facts to keep her job, and of vulnerability to exploitation, manipulation, or duress because of such concealment, is not fully mitigated.

## **Guideline F, Financial Considerations**

The security concern for financial considerations is articulated in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or

unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The evidence establishes that Applicant did not file her state income tax return or pay her state tax debt when due for tax year 2012. She did not have taxes taken out of her unemployment income when she was out of work during the first quarter of 2012, which led to her incurring a state tax liability for 2012. When her return came due in 2013, she chose not to file. Two disqualifying conditions under AG ¶ 19 apply:

- (a) inability or unwillingness to satisfy debts; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Four mitigating conditions under AG ¶ 20 apply in whole or in part:

- (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;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Whereas Applicant's state income tax return and tax payment for 2012 were due in 2013, her failure to comply with her tax obligations cannot reasonably be characterized as "behavior [that] happened so long ago." Yet, it was infrequent under AG ¶ 20(a) in that it was isolated to tax year 2012. Applicant has otherwise filed her returns on time.

AG ¶ 20(b) is partially established in that the tax debt was incurred because of unemployment following a job layoff. AG ¶ 20(b) does not mitigate the concern raised by Applicant's failure to file her state tax return on time, however. The evidence shows that Applicant had been recalled to work by the defense contractor when her return for 2012 should have been filed. Applicant had a legal obligation to file her income tax return on time, independent of whether she could not afford to pay the taxes owed. However, AG ¶ 20(c) and AG ¶ 20(d) are satisfied by Applicant's filing of her delinquent state income tax

return for 2012 on April 8, 2014, and by her payment of her outstanding tax liability at that time. The financial considerations concern is mitigated.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of her conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).<sup>5</sup> In making the overall commonsense determination required under AG ¶ 2(c), I have to consider Applicant's very poor judgment in abusing marijuana while holding a sensitive position with a defense contractor. Applicant knew that it was prohibited conduct, but she felt her use of marijuana did not adversely affect her job performance or her security clearance. Applicant exhibited an unacceptable tendency to put her interests first, whether by using marijuana or by lying about that use to protect her job. Applicant's disclosure of her marijuana involvement to the OPM investigator in December 2013 only partially averts the negative implications for her security worthiness.

Security clearance decisions are not intended as punishment for past wrongdoing. At the same time, once a security concern arises, there is a strong presumption against the grant or continuation of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9<sup>th</sup> Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). For the reasons discussed under Guidelines H and E, *supra*, it is not clearly consistent with the national interest to continue Applicant's security clearance eligibility at this time.

### **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 H:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT

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<sup>5</sup>The factors under AG ¶ 2(a) are as follows:

(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.

Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Paragraph 3, Guideline F:	FOR APPLICANT
Subparagraph 3.a:	For 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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Elizabeth M. Matchinski  
Administrative Judge