



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



In the matter of:	)	
	)	
	)	
	)	ISCR Case No. 07-18496
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Fahryn Hoffman, Esquire, Department Counsel  
For Applicant: John F. Mardula, Esquire

June 24, 2010

**Decision**

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ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, exhibits, and testimony, I conclude that Applicant mitigated security concerns under Guideline G, Alcohol Involvement. However, she failed to rebut or mitigate security concerns under Guideline E, Personal Conduct, Guideline F, Financial Considerations, and Guideline J, Criminal Conduct. Her eligibility for a security clearance is denied.

Applicant completed and signed an Electronic Questionnaire for Investigations Processing (e-QIP) on April 27, 2006. On July 6, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline E, Personal Conduct, Guideline F, Financial Considerations, Guideline G, Alcohol Involvement, and Guideline J, Criminal Conduct. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On August 12, 2009, Applicant answered the SOR in writing and elected to have a hearing before an administrative judge.<sup>1</sup> The case was assigned to me on December 16, 2009. On January 14, 2010, a Notice of Hearing was issued, scheduling Applicant's hearing for February 3, 2010. On January 29, 2010, Applicant's counsel requested a continuance because he had a death in his family. Without objection, Applicant's hearing was rescheduled for March 8, 2010. On that date, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. As a preliminary matter, the Government reported that it had not received the documents that Applicant intended to offer as evidence until 3:00 pm on the last business day before the hearing. By mutual agreement, the parties requested that the hearing be continued until 9:00 am on March 29, 2010. I granted their request, and DOHA issued a revised notice of hearing to reflect the new hearing date.

When the hearing reconvened, the Government called no witnesses and introduced 12 exhibits, which were marked Ex. 1 through 12 and admitted without objection. Applicant testified on her own behalf and called two witnesses. She introduced 36 exhibits, which were marked as follows: Ex. A through Ex. F; Exs. G-1 through G-8; Exs. H through Z; and Ex. AA, Ex. BB, and Ex. CC. Applicant's exhibits were admitted without objection. DOHA received the transcript of the March 8 hearing on March 16, 2010 (Tr. 1). DOHA received the transcript of the March 29 hearing on April 8, 2010 (Tr. 2).

### **Findings of Fact**

The SOR contains 14 allegations of disqualifying conduct under AG E, Personal Conduct (SOR ¶¶ 1.a. through 1.n); 12 allegations of disqualifying conduct under AG F, Financial Considerations (SOR ¶¶ 2.a. through 2.l.); two allegations of disqualifying conduct under AG G, Alcohol Consumption (SOR ¶¶ 3.a. and 3.b.); and five allegations of disqualifying conduct under AG J, Criminal Conduct (¶¶ 4.a. through 4.e.). In her Answer to the SOR, Applicant denied 11 and admitted three of the Guideline E allegations; she denied all 12 of the Guideline F allegations; she denied the two Guideline G allegations; and she admitted three and denied two of the Guideline J allegations. In total, Applicant admitted the following SOR allegations: ¶¶ 1.a., 1.b., 1.m., 4.a., 4.b., and 4.c. Applicant's admissions are admitted as findings of fact. (SOR; Answer to SOR.)

Applicant is 31 years old and has never been married. She is the mother of two daughters, ages seven and twelve. The father of her older child has been incarcerated and has not paid child support. The father of her second child pays Applicant \$425 a month in child support. Applicant is pursuing undergraduate studies and hopes to attain a degree in Information Assurance in the summer of 2011. (Ex. 1; Ex. 4 at 5; Tr. 140-142.)

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<sup>1</sup>By letter dated January 27, 2010, Applicant requested a hearing under ¶ 4.4.3. of the Directive. Her written request that her hearing be allowed to proceed is marked as Hearing Exhibit (HE) 1.

Applicant has been unemployed since October 2009. During her unemployment, she received unemployment benefits. Her eligibility for unemployment benefits expired on April 30, 2010. During her periods of unemployment, Applicant depended upon her mother for support. (Tr. 2 at 168, 224-225.)

Applicant seeks restoration of her security clearance, which was suspended in 2005 during a security clearance investigation. At the time of her hearing, she was neither sponsored by a government contractor for a security clearance, nor did she have a need for access to classified or confidential information. By letter dated January 27, 2010, Applicant invoked ¶ 4.4.3. of the Directive to request that her security clearance hearing be permitted to proceed. (Ex. B; Tr. 1 at 7-8; Tr. 2 at 65-66; HE 1.)

Applicant's employment history begins in about 1998, after she graduated from high school. From April 1998 until July 1998, she worked as a temporary receptionist for an employment agency. From July 1998 until September 1998, she was employed as an accounts payable clerk. After two months of unemployment, she took a job as a customer service representative with a federal contractor, where she worked from November 1998 until April 2000. She left that job voluntarily, without giving notice, because she felt overwhelmed by her responsibilities. In April 2000, Applicant took a position as an office assistant. She was dismissed from this job in May 2000 for a pattern of lateness. The termination is alleged at SOR ¶ 1.a. (Ex. 1; Ex. 4 at 4; Tr. 2 at 161-162, 165-166.)

Applicant obtained another job in May 2000. In October 2000, she left the job following allegations of unsatisfactory performance. From February 2001 until August 2001, Applicant was employed as a receptionist by a federal contractor. From August 2001 until October 2002, Applicant was employed by another federal contractor. In October 2002, Applicant changed jobs again, and worked for five months for another government contractor before she was dismissed for a pattern of lateness. Her termination is alleged at SOR ¶ 1.b. (Ex. 1; Ex. 4 at 3-4; Tr. 2 at 152.)

Applicant's workplace issues were not her only concern: she also faced behavioral issues in her personal life. In March 1999, Applicant was arrested and charged with destruction of property. Her case was *nolle prossed*. This behavior is alleged at SOR ¶ 4.a. (Ex. 7.)

In November 2000, she was served with a protective order for stalking a man with whom she had been romantically involved. From December 2001 to February 2002, she stalked another ex-boyfriend. The two stalking incidents are alleged at SOR ¶¶ 1.m and 1.n. (Ex. B; Ex. 3 at 6-7; Ex. 4 at 6, 12; Ex. 5 at 2; Tr. 2 at 66-68.)

In 2001, when Applicant was employed by a government contractor, she was awarded a security clearance. After eight months with the employer, she left her job. She claimed she had a personality conflict with her supervisor; the employer reported that Applicant was frequently late for work, and she was not eligible for rehire. In 2004, Applicant accepted employment with another government contractor. In her new job,

she was required to have a security clearance and to be approved for an additional level of access. Applicant completed a security clearance application in August 2004. On that form, she denied illegal drug use. In June 2005, she underwent a security clearance investigation conducted by another federal agency. During the investigation, Applicant stated that she had used marijuana about three times a month between 2001 and 2004. She also told an authorized investigator that she used marijuana while holding a security clearance and after signing her employer's no-drug use policy. The agency then revoked Applicant's security clearance and denied her additional access. At her hearing, Applicant denied ever using marijuana, and she stated that the authorized investigator who interviewed her about her drug use in 2005 erred in reporting that she had used marijuana. She provided a signed and notarized statement of intent never to use illegal drugs. In her statement of intent, she consented to automatic revocation of her security clearance if she were to use illegal drugs in the future.<sup>2</sup> Applicant's drug involvement and the agency's decision to revoke her clearance and deny her additional access are alleged at SOR ¶¶ 1.c. and 1.d. (Ex. A; Ex. B at 2; Ex. 3 at 4, 6-7; Ex. 4 at 4; Tr. 2 at 62-63, 157-158, 174-175, 183-185, 224.)

Applicant provided a copy of the letter she received on November 25, 2005, from an adjudicator at the other government agency. The letter read, in pertinent part, as follows:

During your security testing session . . . you stated that you smoked marijuana about three times a month between 2001 and August 2004. You advised that you held a [security] clearance during this timeframe. You acknowledged that you knew it was wrong to use marijuana while holding a security clearance, and added that you had also signed a no-drug policy statement for your employer.

(Ex. B; Ex. 3 at 6-7.)

By letter dated March 1, 2006, Applicant requested that the agency review its determination to revoke her security clearance and deny her additional access. The agency acknowledged receipt of her request and advised her that she would be notified in writing of the outcome of her appeal. Applicant stated that she had not received a decision on her appeal from the agency. She concluded that the agency had reversed its initial decision and restored her security clearance. (Ex. C; Ex. D; Tr. 72-74.)

In March 2006, Applicant was arrested and charged with assault and battery. The charge was *nolle prossed*. In May 2008, she was arrested and charged with driving while intoxicated. She was found guilty of reckless driving. Her driver's license was suspended for six months. She was also sentenced to 30 days in jail, suspended; ordered to attend an alcohol safety awareness program; and fined. She completed the alcohol safety awareness program in December 2008. In September 2008, Applicant

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<sup>2</sup> Applicant testified that she had not provided a copy of her signed statement of intent to her employer. (Tr. 2 at 216-217.)

was cited for drinking in public. She attended a Labor Day picnic in a park and was apprehended by a park ranger as she opened a can of beer. She paid a fine and court costs. In November 2008, a friend of Applicant's borrowed her car and altered her license tags. Applicant was charged with possession of forged license tags. She was found not guilty of the offense. In her answer to the SOR, Applicant denied the drinking in public and possession of forged license tags charges alleged at SOR ¶¶ 4.d. and 4.e. At her hearing, she admitted the underlying conduct, but denied the forged license tag charge because she was found not guilty. She denied the drinking in public charge because she did not believe she had been arrested. These arrests, charges, and citations are alleged at SOR ¶¶ 4.b., 4.c., 4.d., and 4.e. (Ex. W; Ex. X; Ex. Y; Ex. Z; Ex. AA; Ex. CC; Ex. 4 at 5-6; Ex. 5 at 1-2; Ex. 8; Tr. 2 at 123-124, 189-196.)

The SOR also alleged that Applicant is responsible for 12 delinquent debts totaling approximately \$31,752. In her answer to the SOR, Applicant denied all 12 delinquencies. However, in her direct testimony and in cross examination, Applicant admitted all 12 delinquent debts. The evidence established that the following debts had not been satisfied: a judgment for \$4,150, dating to 2003, for a repossessed vehicle (SOR ¶ 2.a.); a \$1,544 debt to an educational institution, charged off in about 2004 (SOR ¶ 2.b.); a judgment for \$14,272, entered against Applicant in 2007, for a repossessed vehicle (SOR ¶ 2.c.); a \$2,670 debt, in collection status, owed to a creditor that evicted Applicant for failure to pay her rent in 2003 (SOR ¶ 2.g.); and a \$273 medical debt, placed in collection status in about August 2006 (SOR ¶ 2.i.)<sup>3</sup> (Ex. I; Ex. M; Tr. 2 at 93-96, 101-102, 200-203, 208, 210-211.)

Additionally, Applicant admitted that a \$4,141 student loan debt, alleged at SOR ¶ 2.d., had not been satisfied. Her Ex. J established that the student loan creditor had offered to settle the debt in November 2009 for \$2,210. Her Ex. K established that the outstanding principal on her student loans was approximately \$16,000, and because she had recently enrolled in higher education, the creditor had deferred payment of her student loans. (Ex. J; Ex. K; Tr. 2 at 89-92, 203-207.)

Applicant acknowledged the \$1,348 delinquent debt alleged at SOR ¶ 2.e. She claimed she had settled the debt for \$700 in 2006. However, she reported that the creditor had no record of her payment. She stated she would pay the debt in the future. (Ex. I; Tr. 2 at 96-97, 208.)

Applicant asserted that the \$391 delinquent medical account alleged at SOR ¶ 2.f. was a duplicate of a \$388 delinquent medical account alleged at SOR ¶ 2.h. However, Applicant failed to provide documentation to establish that the accounts were the same. (Ex. I; Ex. L; Tr. 2 at 97-100, 209-210.)

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<sup>3</sup> Applicant stated she had a payment plan with the creditor identified in SOR ¶ 2.g. and would pay the debt at a future time. Applicant's Ex. M indicated that the debt alleged at SOR ¶ 2. i. had not been paid. (Ex. M; Tr. 2 at 208-210.)

The SOR alleged at ¶ 2.k. that Applicant was indebted to a state unemployment commission for a \$1,029 overpayment of unemployment compensation. Applicant provided documentation establishing that her subsequent unemployment compensation had been garnished to satisfy the overpayment. (Ex. T; Ex. U; Tr. 2 at 109-113, 169-172.)

The SOR alleged at ¶ 2.j. that Applicant owed a \$623 delinquent debt to a creditor on an account placed for collection in January 2007. Applicant provided documentation establishing that she had made payments which reduced the current balance due to \$123. (Ex. I; Ex. P; Ex. Q; Ex. R; Ex. S; Tr. 2 at 104, 108, 211-212.)

The SOR also alleged at ¶ 2.i. that Applicant owed a delinquent medical debt of \$468 that had not been satisfied. Applicant provided documentation to establish that she had made payments on the debt which reduced the current balance to \$218. (Ex. I; Ex. N; Ex. O; Ex. V; Tr. 2 at 105-107, 212-213.)

Applicant completed, signed, and certified an e-QIP on April 27, 2006. She signed the following certification after completion of her e-QIP:

My statements on this form, and any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both. (See section 1001 of title 18, United States Code).

(Ex. 1 at 44.)

Section 24 on the e-QIP seeks information on an applicant's use of illegal drugs and drug activity. It contains the following advisory:

The following questions pertain to the illegal use of drugs or drug activity. You are required to answer the questions fully and truthfully, and your failure to do so could be grounds for an adverse employment decision or action against you, but neither your truthful responses nor information derived from your responses will be used as evidence against you in any subsequent criminal proceeding.

(Ex. 1 at 38.)

Question 24a on the e-QIP reads:

Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs?

(Ex. 1 at 38.)

Applicant answered “No” to Question 24a. She did not acknowledge using marijuana three times a month from about 2001 to 2004. Applicant’s failure to disclose the information about her marijuana use is alleged at SOR ¶ 1.e. (Ex. 1 at 38.)

Question 24b on the e-QIP reads:

Have you ever illegally used a controlled substance while employed as a law enforcement officer, prosecutor, or courtroom official; while possessing a security clearance; or while in a position directly and immediately affecting the public safety?

(Ex. 1 at 38.)

Applicant answered “No” to Question 24b. She did not acknowledge using marijuana while holding a security clearance. Her failure to disclose her marijuana use while holding a security clearance is alleged at SOR ¶ 1.f. (Ex. 1 at 38.)

Question 26b on the e-QIP inquires about an individual’s investigative record and reads: “To your knowledge, have you ever had a clearance or access authorization denied, suspended, or revoked, or have you been disbarred from government employment? If “Yes,” give date of action and agency.” (Ex. 1 at 39.)

Applicant answered “No” to Question 26b. She did not acknowledge that she was denied additional access and her security clearance was revoked by another Government agency in November 2005. Applicant’s failure to disclose that she had been denied additional access and that her security clearance had been revoked by action of another Government agency in November 2005 is alleged at SOR ¶ 1.g. (Ex. 1 at 40.)

On April 23, 2007, Applicant was interviewed by an authorized investigator from the U.S. Office of Personnel Management (OPM). During her interview, Applicant stated that she had failed a question in her interview with another federal agency regarding her use of marijuana. She stated to the investigator that she had not used marijuana and did not understand why she failed the question. She did not disclose her marijuana use between 2001 and 2004. Applicant’s failure to disclose her marijuana use to the authorized investigator on April 23, 2007 is alleged at SOR ¶ 1.h. (Ex. 4 at 3.)

In the same interview, Applicant stated that she had never been denied a security clearance. She failed to disclose to the investigator that she had been denied additional access by another federal agency and that her security clearance had been

revoked in about November 2005. Applicant's failure to disclose this information is alleged at SOR ¶ 1.i. (Ex. 4 at 3.)<sup>4</sup>

On August 27, 2008, Applicant was interviewed again by an OPM investigator. During this interview, she stated that she had never used any illegal drugs. She did not disclose her use of marijuana from 2001 to 2004. Her failure to disclose her marijuana use to the authorized investigator on August 27, 2008, is alleged in the SOR at ¶ 1.j. (Ex. 4 at 13.)

On September 26, 2008, Applicant provided a signed, sworn statement to an OPM investigator. In that statement, she stated that she never used marijuana or any other illegal drug. She failed to disclose her use of the illegal drug marijuana from 2001 to 2004. Applicant's failure to disclose her marijuana use in her signed, sworn statement is alleged at SOR ¶ 1.k. Additionally, Applicant testified at her security clearance hearing on March 29, 2010, that she had never used marijuana. (Ex. 5 at 2-4; Tr. 2 at 224.)

In her September 26, 2008 signed, sworn statement to the authorized OPM investigator, Applicant disclosed she was arrested in June 2008 and charged with a criminal offense related to alcohol consumption. However, she failed to disclose that earlier that month, on September 1, 2008, she had been cited for drinking in public. Applicant's failure to disclose her citation for drinking in public is alleged at SOR ¶ 1.l. At her hearing, Applicant testified that she told the investigator about her drinking in public citation, but he did not include it in the statement. (Ex. 2; Ex. 5 at 1-12; Tr. 2 at 126.)

When Applicant was interviewed by an OPM investigator in April 2007, she provided information about her alcohol use. In January 2009, in response to DOHA interrogatories, she affirmed that the following information was accurate:

Subject occasionally drinks alcohol to the point of intoxication an average of three or four times per year. Subject drinks long island iced teas [a mixed drink containing alcohol] when out with her friends at bars approximately once or twice a month. When drinking to the point of intoxication, this includes three drinks and subject becomes tipsy and dances for fun. She does not black [out] or become violent. Subject drinks alcohol for celebration. Subject does not consider her alcohol use a

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<sup>4</sup> Applicant's statements about the revocation of her security clearance and denial of higher-level access are ambiguous and contradictory. In a personal subject interview in August 2008, she stated that she appealed the denial of her security clearance and lost the appeal. She reported that she was told she could repeat the security investigation in one or two years. (Ex. 4 at 13.) In response to DOHA interrogatories in January 2009, she stated that she appealed the earlier revocation of her clearance, her appeal was granted, and her clearance was granted. However, she also attached the letter from the other Government agency informing her that she had been disapproved for additional access to classified information and her existing security clearance had been revoked for drug involvement and personal conduct issues. That letter is dated November 25, 2005. (Ex. 3 at 5; Ex. B.) Applicant provided a signed, sworn statement in which she stated that she did not know when she completed and certified her e-QIP in April 2006 that her clearance had been suspended, denied, or revoked. (Ex. 5 at 5.)



problem and it has not had any impact on her professional life, home life, her physical or emotional health and she has not had any arrests or criminal activity related to her alcohol use. Her alcohol use is not something that could leave her susceptible to blackmail or coercion.

(Ex. 4 at 5, 18.)

In August 2008, when she was again interviewed by an OPM investigator, Applicant discussed her arrest for driving under the influence of alcohol in June 2008, and her use of alcohol since about the year 2000. In January 2009, again in response to DOHA interrogatories, Applicant affirmed that the information which follows was accurate:

Subject first consumed alcohol at age 21 at her 21<sup>st</sup> birthday party. From age 21 to 23 the subject would only drink about once every 6 months and was intoxicated twice. From 23 to 25 the subject would only drink about once every six months and was not intoxicated during this time. From 25 to 27 the subject would have some alcohol about once every other week, mainly one or two drinks. Subject did not get intoxicated. From age 27 to present the subject will drink about 4 times a year and has not been intoxicated. The subject is not addicted to alcohol and has not sought counseling. Subject's alcohol use has not caused issues with friends, family finances, school, or work. Subject has not experienced any negative personality changes because of the alcohol.

(Ex. 4 at 15-16, 18.)

The SOR alleges at ¶ 3.a. that Applicant consumed alcohol, at times to excess and to the point of intoxication, from approximately March 2000 to at least August 2008. The SOR also cross-alleges at ¶ 3.b. that Applicant's arrest in May 2008 for driving while intoxicated and her citation for drinking in public in September 2008 raise security concerns under Guideline G, alcohol consumption. In her answer to the SOR, Applicant denied the two alcohol consumption allegations. (SOR; Answer to SOR.)

At her hearing, Applicant repeated her denials to SOR allegations at ¶¶ 3.a. and 3.b. She stated that while she was initially charged with driving while intoxicated, she was convicted of reckless driving. She also stated her understanding that she was not arrested and charged with drinking in public, but, instead, was cited for the offense and paid a fine in lieu of a court appearance. She denied consuming alcohol to the point of intoxication. She further stated: "I did consume alcohol to relax me and that would probably be a bottle of cheap champagne, Merlot, one bottle every two months. " In December 2008, Applicant completed an alcohol safety awareness program. She stated at her hearing that she no longer consumes alcohol. She stated that she last consumed alcohol in September or October 2008. (Ex. 2 at 8; Tr. 2 at 117-127, 192.)

Applicant's former supervisor appeared as a character witness on her behalf. He worked with Applicant for about seven or eight months before he left the company. He testified that, in his opinion, Applicant was motivated, conscientious, and exercised good judgment. (Tr. 2 at 35-42.)

A former coworker also appeared as a character witness for Applicant. She testified that she had known Applicant for approximately nine months. She stated that, in her opinion, Applicant was diligent, thorough in her work, and followed established rules and regulations. (Tr. 2 at 47-52.)

In the first nine months of 2009, Applicant earned approximately \$58,000. Since losing her job in October 2009, she receives approximately \$414 in unemployment compensation for herself and her two children each week.<sup>5</sup> Each month, she also receives \$550 in child support and \$243 in food stamps. (Tr. 2 at 230-235.)

Applicant's monthly rent is \$1,500 and her monthly car payment is \$425. Her mother pays her utility bills and car insurance. Applicant's mother, who is handicapped, plans to retire and move in with Applicant and her children. She will pay Applicant \$700 toward the monthly rent until Applicant finds a job. Applicant asks her sister to help her buy gasoline. (Tr. 2 at 231-234, 241.)

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's

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<sup>5</sup> At the suggestion of Applicant's counsel, I multiplied her weekly unemployment compensation by 4.3 to arrive at a monthly amount of \$1,780. (Tr. 2 at 233.)

overarching 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 in seeking 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 protect or 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**

### **Personal Conduct**

AG ¶ 15 explains why personal conduct is a security concern:

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.

In 2000, Applicant was fired from a job because she was frequently late for work. That same year, a former boyfriend obtained a protective order to prevent Applicant from stalking him. Applicant stalked another former boyfriend in 2001 and 2002. In 2003, Applicant was fired from another job for attendance issues. This conduct suggests a pattern of unreliability and an unwillingness to comply with rules and regulations.

In about November 2001, Applicant was granted a security clearance. In 2004, her employer recommended her for additional access, and she completed a security clearance application in which she denied illegal drug use. In 2005, during her security clearance investigation, Applicant admitted using marijuana about three times a month between 2001 and August 2004, while holding a security clearance. In about November 2005, she was denied additional access and her security clearance was revoked.

In April 2006, Applicant completed a security clearance application. In response to Questions 24a, 24b, and 26b on that SF-86, Applicant answered "No", thereby denying any drug use since the age of 16 or in the last seven years, any drug use while holding a security clearance, and any previous revocation, suspension, or denial of her security clearance.

In interviews with authorized investigators in April 2007 and August 2008, Applicant stated that she had never used marijuana, and she failed to disclose her marijuana use from 2001 to 2004. In her April 2007 interview with an authorized investigator, she also failed to disclose that she was denied additional access and her security clearance was revoked by another government agency in November 2005.

On September 26, 2008, Applicant was again interviewed by an investigator who assisted her in the preparation of a signed, sworn statement. In her signed, sworn statement, Applicant stated that she never used marijuana or any other illegal drugs. She failed to disclose her marijuana use between 2001 and 2004. She also failed to disclose that she had been cited for drinking in public on September 1, 2008.

Applicant's personal conduct raises security concerns under AG ¶¶ 16(a), 16(b), 16(c), and 16(e)(1). AG 16(a) reads: "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." AG ¶ 16(b) reads: "deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative."

AG ¶ 16(c) reads: "credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single adjudicative guideline, but which, when considered as a whole, 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.” AG ¶ 16(e)(1), reads in pertinent part as follows: “personal conduct, or concealment of information about one’s conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person’s personal, professional, or community standing.”

The disqualifying personal conduct alleged in the SOR occurred between 2000 and 2008. From 2000 to 2002, Applicant stalked two former boyfriends, and in 2000 and 2003, she was terminated from two jobs for lateness and attendance issues. These events, which occurred over seven years ago, when viewed as a whole with other more recent personal conduct allegations, raise security concerns under AG ¶ 16(c). As a whole, the events indicate, under a whole-person assessment, questionable judgment, unreliability, lack of candor, and an unwillingness to comply with rules and regulations, suggesting that Applicant may not properly safeguard protected information.

After being granted a security clearance in 2001, Applicant used marijuana about three times a month between 2001 and 2004. In November 2005, her security clearance was revoked and she was denied additional access as the result of her personal conduct and her drug involvement. These facts raise security concerns under AG ¶ 16(e)(1).

When she completed and signed her e-QIP in April 2006, Applicant falsified her responses to the e-QIP by failing to disclose her marijuana use and her drug use while holding a security clearance. She also failed to disclose that another Government agency disapproved her request for additional access and revoked her clearance because of her drug involvement and personal conduct issues. On three separate occasions, in April 2007, August 2008, and September 2008, when she was interviewed by OPM investigators, Applicant failed to disclose her marijuana use from 2001 to 2004. Additionally, in 2007, she failed to disclose that she had been denied additional access and her security clearance had been revoked by another federal agency in November 2005. In her signed, sworn statement of September 26, 2008, Applicant again falsified her response by denying ever using illegal drugs. Additionally, she failed to disclose that she had been cited for drinking alcohol in public. After a thorough examination of the record, carefully observing Applicant, and listening to and reading her testimony, I conclude that her falsifications of her April 2006 e-QIP were deliberate. I also conclude that she deliberately provided false or misleading information concerning relevant facts about her marijuana use, her drug use while holding a security clearance, and the revocation of her security clearance and denial of additional access to the authorized investigators who interviewed her on April 23, 2007 and August 27, 2008. Further, I conclude that Applicant falsified her signed, sworn statement of September 26, 2008, by stating that she never used marijuana or any illegal drugs and by failing to disclose a citation for drinking in public.

I have carefully reviewed the several mitigating conditions under Guideline E. I conclude that none of the mitigating conditions applies in this case.

## **Guideline F, Financial Considerations**

The security concern 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.

Applicant accumulated delinquent debt that remained unsatisfied for several years. She was unable or unwilling to pay her creditors. This evidence is sufficient to raise these potentially disqualifying conditions.

The guideline includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several mitigating conditions could apply to the security concerns raised by Applicant's financial delinquencies. If the financially delinquent 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," then AG ¶ 20(a) might apply. If "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," then AG ¶ 20(b) might apply. If "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," then AG ¶ 20(c) might apply. If "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," then AG ¶ 20(d) might apply. Finally, if "the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue," then AG ¶ 20(e) might apply.

The record shows that Applicant's financial delinquencies date to at least 2003, and they have continued to the present. Moreover, Applicant now lacks sufficient financial resources to meet her family's basic needs and must rely upon her mother for additional support. Applicant owes over \$31,000 in delinquent debts, which she cannot satisfy. To her credit, she provided documentation to establish that she was paying down the debts alleged at SOR ¶¶ 2.j. and 2.i. However, the record suggests that her

financial difficulties occurred under circumstances that are likely to recur, and they cast doubt on her current reliability, trustworthiness, and good judgment.

The record does not include facts that suggest protracted conditions beyond Applicant's control that would explain her failure over a period of years to meet her financial obligations. While she experienced periodic unemployment and the challenges of raising two children as a single parent, she is also pursuing a college degree.

Applicant stated that she intends to satisfy several of her creditors in the future. While Applicant's intention to satisfy her creditors is laudable, she has failed to demonstrate a track record of financial responsibility. She has not yet demonstrated priorities that emphasize paying her existing debts and avoiding additional financial delinquencies in the future. While I conclude that AG ¶ 20(b) and 20(d) apply in part to the facts of Applicant's case, I also conclude that AG ¶¶ 20(a), 20(c), and 20(e) do not apply to her case.

### **Guideline G, Alcohol Consumption**

Guideline G, Alcohol Consumption, applies in this case to a determination of eligibility for access to classified information. Under Guideline G, "[e]xcessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability."

I have considered all of the Alcohol Consumption Disqualifying Conditions. I have especially considered AG ¶¶ 22(a) and 22(c). AG ¶ 22(a) reads: "alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent." AG ¶ 22(c) reads: "habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent."

Applicant began to consume alcohol in about 2000, when she was 21 years old. In April 2007, she reported that she occasionally drank alcohol to intoxication three or four times a year. She drank when she went out with her friends once or twice a month. She did not consider her alcohol use a problem. In August 2008, she reported to an authorized investigator that, since the age of 27, she had consumed alcohol about four times a year and had not been intoxicated.

In June 2008, Applicant was arrested for the first and only time for driving under the influence of alcohol. She was found guilty of reckless driving and ordered to take part in an alcohol safety awareness education program. In September 2008, she was cited for drinking in public at a Labor Day picnic in a park. These facts raise security concerns under AG ¶¶ 22(a) and 22(c).

The Guideline G disqualifying conduct could be mitigated under AG ¶ 23(a) if “so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment.” The disqualifying conduct could also be mitigated under AG ¶ 23(b) if “the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser).” If “the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress,” then AG ¶ 23(c) might apply. Finally, mitigation might be possible under AG ¶ 23 (d) if “the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.”

Applicant is now 31 years old. In June 2008, she was arrested and charged with driving under the influence of alcohol. Three months later, in September 2008, she was cited for drinking in public. These alcohol-related incidents are relatively recent.

In December 2008, Applicant successfully completed an alcohol safety awareness program. Nothing in the record suggests that Applicant has been diagnosed as an abuser of alcohol or as alcohol dependent. She last consumed alcohol in September or October 2008. At her hearing, she reported that she no longer drinks alcohol. I conclude that AG ¶ 23 (a) applies in mitigation in this case: Applicant’s alcohol involvement behavior, while recent, reflected infrequent use, happened under such unusual circumstances that it is unlikely to recur, and does not cast doubt on her current reliability, trustworthiness, or good judgment.

### **Guideline J, Criminal Conduct**

Under the Criminal Conduct guideline “[c]riminal 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.” AG ¶ 30.

Applicant admits a history of criminal conduct that spans nine years. In 1999, she was arrested and charged with destruction of property. The charge was *nolle prossed*. In 2006, she was arrested and charged with assault and battery. That charge was also *nolle prossed*. In May 2008, she was arrested for driving while intoxicated. She was found guilty of reckless driving, was sentenced to 30 days in jail, suspended, and ordered to attend an alcohol education program. Her driver’s license was suspended for six months, and she was fined. Despite Applicant’s initial denials, the record evidence



established Applicant's drinking in public charge and the charge that she was in possession of forged license plates. This behavior raises concerns under AG ¶ 31(a) and AG ¶ 31(c). AG ¶ 31(a) reads: "a single serious crime or multiple lesser offenses." AG ¶ 31(c) reads: "allegation or admission or criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted."

Two Criminal Conduct mitigating conditions might apply to Applicant's case. If "so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment," AG ¶ 32(a) might apply. If "there is evidence of successful rehabilitation, including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive involvement," then AG ¶ 32(d) might apply.

The record establishes that Applicant's criminal behavior began in 1999 and continued to at least 2008. Her criminal conduct is, therefore, recent. Two witnesses offered character testimony on behalf of Applicant and stated that they thought she was trustworthy and reliable. However, in her answers to the SOR, Applicant denied two criminal conduct allegations for narrow reasons, even though, at her hearing, she acknowledged the truth of the underlying conduct alleged. Applicant's denials suggest that she has not fully acknowledged responsibility for her conduct, which, in turn, raises continuing security concerns about her lack of remorse and rehabilitation. Applicant's long-standing pattern of criminal behavior continues to cast doubt on her reliability, trustworthiness, and good judgment. I conclude that neither AG ¶ 32(a) nor AG ¶ 32 (d) applies.

### **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 relevant 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. I observed Applicant's demeanor closely at her hearing, and I listened carefully to her testimony. My review of the record reveals that Applicant has worked hard to acquire an education and to care for her two daughters. She has had difficulties in maintaining steady employment and in paying her creditors.

When she answered the 12 financial allegations in the SOR, Applicant denied all of them. However, in direct testimony and in cross-examination, she admitted the allegations and acknowledged that the debts were her responsibility. She also denied the criminal conduct allegations alleged at ¶¶ 4. d. and 4.e., and yet she admitted the underlying allegations. Applicant's conduct suggested that she is not committed to answering truthfully and uses denial as a tactic.

Applicant completed her e-QIP in April 2006, just five months after receiving a letter from another Government agency revoking her security clearance and denying her additional access because of drug use and personal conduct issues. However, Applicant failed to report her marijuana use between 2001 and 2004, which occurred while she held a security clearance. She also failed to report that her security clearance had been revoked in November 2005. I conclude that her failure to report this information on her e-QIP was a deliberate attempt to mislead the Government.

Additionally, Applicant provided false and misleading information about her drug use and the revocation of her security clearance to OPM investigators during security clearance investigations in April 2007 and in August and September 2008. I conclude that Applicant deliberately failed to give truthful answers to the investigators and was not a credible witness. Moreover, her failure to tell the truth about her drug use and the revocation of her security clearance continued during her security clearance hearing on March 29, 2010.

Applicant's failure to give truthful answers on her e-QIP, during three interviews with authorized investigators, and at her hearing raises serious concerns about her credibility and her vulnerability to pressure, coercion, exploitation, or duress. It also suggests that she may not know how to respond truthfully in other situations, raising the likelihood that she may continue to be untruthful in the future. Because the Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information, it must be able to rely, with confidence, on their capacity to act honorably and report truthfully.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. Accordingly, I conclude, after a careful review of the facts of her case, the adjudicative guidelines, and the whole-person concept, that Applicant failed to mitigate the security concerns arising from her personal conduct, financial delinquencies, and criminal 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 E:	AGAINST APPLICANT
Subparagraphs 1.a. - 1.n.:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a. - 2.i.:	Against Applicant
Subparagraphs 2.j. - 2.l.:	For Applicant
Paragraph 3, Guideline G:	FOR APPLICANT
Subparagraphs 3.a. - 3.b.:	For Applicant
Paragraph 4: Guideline J:	AGAINST APPLICANT
Subparagraphs 4. a. - 4.e.:	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 for a security clearance. Eligibility for access to classified information is denied.

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Joan Caton Anthony  
Administrative Judge