



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-09869
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Caroline H. Jeffreys, Esq., Department Counsel  
For Applicant: *Pro Se*

September 30, 2009

**Decision**

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MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant completed a Questionnaire for Sensitive Positions (SF-86) dated June 20, 2008. On February 10, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising under Guideline F (Financial Considerations) and Guideline H (Drug Involvement). 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 revised Adjudicative Guidelines (AG) promulgated by the President on December 29, 2005, which are effective for SORs issued after September 1, 2006.

In a March 6, 2009, response, Applicant admitted 12 of the 17 allegations set forth in the SOR and requested a hearing on the matter. DOHA assigned the case to me on June 18, 2009. Department Counsel and Applicant agreed to a hearing date of July 14, 2009. A notice of hearing was issued to that effect on June 24, 2009. I convened the hearing as scheduled. Applicant gave testimony and offered nine documents. Department Counsel objected to Applicant's first proffered document. That document was a personal statement by a third party. It was initially excluded for its

representation of corroborating testimony regarding which the writer was unavailable for cross-examination.<sup>1</sup> The remaining documents were admitted as exhibits (Exs.) A-H. Applicant was given through July 28, 2009, to submit any additional documentation.<sup>2</sup> Department Counsel offered eight documents, admitted as exhibits (Exs.) 1-8 without objection. On July 15, 2009, Applicant submitted 12 documents through Department Counsel. The transcript (Tr.) of the proceeding was received on July 22, 2009. In forwarding Applicant's package on July 28, 2009, Department Counsel objected to eight of Applicant's documents. She cited to relevance, incompleteness, and the authenticity of an unsigned witness statement. After due consideration, all the documents were ultimately accepted into the record and marked as Exs. I-T, with Department Counsel's objections duly noted.<sup>3</sup> Those documents admitted against the objection of Department Counsel were given appropriate weight in light of the objections argued. The record was closed on July 29, 2009.

On August 2, 2009, Applicant transmitted to Department Counsel a 39-page package containing 14 additional documents. Department Counsel moved to object to their inclusion as untimely. The newly offered documents included responses to Department Counsel's objections to Applicant's previous submissions. Inasmuch as those previous submissions were admitted against Department Counsel's objections, that issue is moot. The remainder of the documents pre-date Applicant's deadline for submitting post-hearing information by anywhere from a month to several years.<sup>4</sup> Good cause was neither shown nor offered as to why they were not included in her original submission or some time prior to the closing of the record. Consequently, Department Counsel's objection motion regarding the August 2, 2009, submissions is sustained.

Based on a review of the testimony, submissions, and exhibits, I find Applicant failed to meet her burden regarding the financial considerations security concerns raised. Security clearance is denied.

### **Findings of Fact**

Applicant is a 45-year-old owner of a government contracting company. She has been an owner for the past three years. Her projects currently do not require a security clearance. She believes she can contribute to the defense contracting industry and hopes a security clearance will help make her business more lucrative. Applicant earned a bachelor of arts degree in telecommunications and bachelor of science in

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<sup>1</sup> Integral excerpts from that exhibit, a statement by Applicant's ex-husband, were repeatedly referenced by the parties during the hearing. Consequently, I have admitted the document as Exhibit U and given it appropriate weight in view of Department Counsel's objection.

<sup>2</sup> This date was chosen to provide Applicant with additional time to submit her first bankruptcy payment, scheduled for July 15, 2009. Tr. 47.

<sup>3</sup> Post-hearing submission items 2, 3, 5, 6, 7, 8, 9, and 11; item 10 is an academic "To whom it may concern" letter of recommendation depicted by Department Counsel as an unsigned witness statement.

<sup>4</sup> The exceptions to this are copies of correspondence from Department Counsel concerning her receipt of Applicant's earlier submission and her objections to many of the documents contained therein.

computer science. Twice divorced, she has no children. Applicant is respected in her community.<sup>5</sup>

Since about 2005, Applicant has suffered a series of strokes, sometimes diagnosed under the older term of “cerebral vascular accident.”<sup>6</sup> Her 2005 stroke led to a period of recuperation and rehabilitation lasting an unspecified number of months. During this period, she could not work.<sup>7</sup> Another stroke occurred after a brief return to the workplace. As a result, she lost her job and was forced to seek aid from Social Security. This entailed a five month waiting period, during which Applicant had no income.<sup>8</sup> She was only able to subsist through financial assistance from her mother.<sup>9</sup> Applicant has also suffered from intervening transient ischemic attacks (TIA), mini-strokes often heralding the advent of a full stroke which can affect speech and understanding. These have also disrupted her ability to work and generate a salary.<sup>10</sup> It is not uncommon for strokes to cause various degrees of memory loss.<sup>11</sup>

Applicant was examined for a possible stroke in 2007.<sup>12</sup> In addition, she was under a doctor’s care for either a more recent incident or a follow-up as of at least August 2008. In the interim, Applicant completed the June 20, 2008, SF-86 at issue. At that time, she was being prescribed several medications, including Valium and Paxil. After her August 2008 doctor’s appointment, Applicant’s doctor wrote that her speech and walk had been affected by her medical condition. The doctor also noted that Applicant was currently unable to maintain gainful employment and would need help with housing and medication.<sup>13</sup> As a result, Applicant was determined to be medically disabled. In October 2008, Applicant became eligible for Medicare, which has since helped pay for her medical needs.<sup>14</sup>

Over the past few years, Applicant has been prescribed other medications, each with varying side effects. At times she has been prescribed opioids related to pain

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<sup>5</sup> Ex. R (References).

<sup>6</sup> Tr. 16-18, 111; Ex. D (Doctor’s letter and attachments, dated Aug. 6, 2008).

<sup>7</sup> Tr. 111.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*, at 2, 16.

<sup>11</sup> Notice is taken of this common side effect. See, e.g., <http://www.mayoclinic.com/health/stroke/DS00150/DSECTION=complications>.

<sup>12</sup> Ex. D, *supra*, note 9, at 5.

<sup>13</sup> *Id.*, at 1.

<sup>14</sup> Tr. 111.

management.<sup>15</sup> Although she claims her “mind is never distorted” with regard to her ability to run her business, she testified that she has difficulty with dates.<sup>16</sup> This difficulty also was shown to have affected her memory with regard to significant professional and personal events.<sup>17</sup> The financial repercussions of her recent medical history have been extensive. The medical bills noted in the SOR do not reflect the full extent of her medical costs or liability. Noting the relatively modest amount of medical debt at issue, Department Counsel asked whether she had already paid off a significant amount of her medical debt. Applicant stated: “No. I’m just getting started.”<sup>18</sup>

Applicant’s financial difficulties first occurred in 1995, the year her health first began to decline. That year, she wrote several checks of nominal value to local merchants. Before they were cashed, her ex-husband, whom she had divorced in 1993, but still maintained some contact despite their abusive relationship, used her bank card to withdraw funds from her account without her knowledge. Consequently, there were insufficient funds to cover her checks. As a result, she was charged in February 1995 and April 1995 on multiple accounts of Negotiating Worthless Instruments (Checks). SOR allegations ¶¶ 1.a-1.b. On both occasions, she pled guilty to all charges and was sentenced to 10 days suspended work release and 9 months of probation.

In about August 2003, Applicant filed for Chapter 7 bankruptcy protection. SOR allegation ¶ 1.c. She did so after receiving financial counseling.<sup>19</sup> Some of the debt consisted of obligations dating back to her first marriage. Applicant does not recollect an approximate amount of the debt at issue. Her debt was discharged in 2004.<sup>20</sup>

Currently at issue are the following delinquent debts, as cited in credit reports from December 29, 2008, and June 27, 2008, and noted in the SOR as:

¶¶ 1.d-1.e (medical providers, \$1,050) – UNPAID – As discussed below, Applicant has been unable to pay any of these delinquent debts.

¶¶ 1.f, 1.i, i.j (medical entity, \$316) – UNPAID – As discussed below, Applicant has been unable to pay any of these delinquent debts.

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<sup>15</sup> *Id.*, at 9, 11, and 15.

<sup>16</sup> See, e.g., Tr. 18, 20, 44-46, 49-50, 52-54, 56-60, 72-73, 81, 102. “My dates may be off. . . . Some days are bad days, you know. It’s enough to remember how to spell my name. . . . I’m just saying, my dates may be wrong.” Tr. 59. Applicant did not disagree with Department Counsel’s observation that “[Applicant’s] testimony has been inconsistent and all over the map as to what was happening and what the dates were for everything.” Tr. 78-79.

<sup>17</sup> *Id.*

<sup>18</sup> Tr. 112.

<sup>19</sup> Tr. 119.

<sup>20</sup> Applicant misidentified the year as 2003. Tr. 83.

¶ 1.g (credit card account, \$1,339) – DISPUTED – This debt was incurred by one of Applicant’s two ex-husbands. It originally had a balance of \$500, but it increased due to interest fees. She initially disputed this debt with a credit reporting agency. She provided evidence that the account was disputed.<sup>21</sup> She subsequently negotiated a settlement on the account for \$250. She stated that she paid this amount and had evidence of payment, but no proof of payment was ultimately submitted.<sup>22</sup> She initially argued that this account is the same as ¶ 1.k, but provided no evidence to that effect.<sup>23</sup>

¶ 1.h (credit card, \$1,092) – UNPAID – Applicant stated that an ex-husband incurred the balance on this card on the condition he pay her back for his purchases.<sup>24</sup> When he failed to repay her the balance, she denied the debt was hers to investigators. She ultimately took responsibility for the debt and negotiated a settlement on this account for \$500. No evidence of payment, however, was provided.<sup>25</sup>

¶ 1.k (Collection for bank, \$981) – UNPAID – Applicant claims this account is the same as the account cited at ¶ 1.g, above, but provided no evidence linking the two accounts.<sup>26</sup> She previously submitted a copy of an offer to settle the debt with the collection entity, but included no documentary evidence that the settlement offer was accepted and paid.

¶¶ 1.l, 1.m, 1.n, 1.o (medical collections, \$365) – UNPAID – As discussed below, Applicant has been unable to pay any of these delinquent debts.

¶ 1.p (automobile account, \$12,548) – UNPAID – This account concerns a voluntary repossession. She called the lender to have the car collected after she was one month behind in her payments. She knew she would not be able to make future payments. The company did not collect the car for an additional month or two. It charged her for the entire period the car remained within Applicant’s control.<sup>27</sup> Applicant provided correspondence regarding an offer by the creditor to settle for 30% of the balance, reducing her debt to \$3,7887.79. Applicant concedes, however, that she has not paid anything toward that balance or toward an alleged counteroffer she proposed to pay \$500 for the late payments.<sup>28</sup>

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<sup>21</sup> Ex. P (Partial Credit Report 15/30) at 2. The report shows the current balance as \$1,229.

<sup>22</sup> Tr. 84-86. Applicant did, however, submit evidence that this debt may be a medical account, not a credit card account, as noted in the credit report. Ex. M (Partial Credit Report).

<sup>23</sup> Tr. 85, 87.

<sup>24</sup> Tr. 87.

<sup>25</sup> Tr. 86-87.

<sup>26</sup> Tr. 85, 87.

<sup>27</sup> Tr. 98.

<sup>28</sup> Tr. 99-100; Ex. N (Automobile Repossession Materials). Elsewhere in the record, Applicant stated she vacated the house in July 2004. Tr. 111.

¶ 1.q (past due 180 days mortgage redeemed through foreclosure) – UNRESOLVED – Applicant submitted several documents bringing this allegation into question, but leaving the issue unresolved. She states that she sold the house at issue in June or July of 2005, prior to a foreclosure action commenced in about February 2006.<sup>29</sup> She provided no evidence, however, of the alleged sale or deed transfer. Her March 2008 credit report shows a zero balance owed, but notes that the account remains 120 days past due.<sup>30</sup> Her documents also show a mortgage with a different company as having been late and transferred.<sup>31</sup> A more recent credit report shows an additional mortgage entry with the same date of opening, high credit, and \$756 balance with the notation “Account transferred or sold.” She claims this latter entry reflects her mortgage on the home at issue.<sup>32</sup> She failed to provide evidence, however, linking her with the latter mortgage company or showing that the conflicting entry was either transferred from her name or otherwise belongs to a third party.

Applicant seeks to work in some capacity to keep active and to cover both her debts and current expenses. She does not currently have credit cards, nor does she have a car loan. Her savings are depleted and her checking account is overdrawn.<sup>33</sup> Other than the \$250 she testified she paid toward SOR allegation ¶ 1.g, Applicant has been unable to make any payments toward any of the debts at issue “because . . . I make a month what I usually [made] the first three days of a work week.”<sup>34</sup>

Applicant lives alone with her pets. A friend checks on her occasionally and performs various chores, for which Applicant pays him a nominal sum plus his transportation. She currently receives approximately \$1,234 a month, from which \$96 is paid to Medicare, \$435 is expended on prescriptions, \$550 is spent on rent, telephone/internet cost about \$70 month, while utilities run from \$275-\$300 a month.<sup>35</sup> This does not include groceries, toiletries, or sundry items.<sup>36</sup> Her annual income is currently supplemented by approximately \$450 from her work through her company. She is currently seeking federal housing assistance under the Section 8 program.<sup>37</sup> She receives some assistance from local churches, organizations, and the community “food

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<sup>29</sup> Ex. O (Mortgage information) at 1-2.

<sup>30</sup> *Id.* at 4.

<sup>31</sup> *Id.* at 3.

<sup>32</sup> *Id.* at 5.

<sup>33</sup> Tr. 114.

<sup>34</sup> *Id.*

<sup>35</sup> Tr. 114-115.

<sup>36</sup> Tr. 117. Her parents generally contribute to her groceries.

<sup>37</sup> Tr. 115.

line.”<sup>38</sup> Applicant admits her expenses exceed her income “significantly.”<sup>39</sup> Her past financial counseling has not been able to help her with her current situation.<sup>40</sup>

Aside from Applicant’s financial situation, an additional issue remains. The SOR also alleges (¶ 2.a) Applicant used marijuana on one occasion in December 2006, after being granted a security clearance in June 2004. That allegation is based on the answer Applicant provided on her June 2008 SF-86.<sup>41</sup> After submitting her June 2008 SF-86, an investigation followed. In response to follow-up questions in a December 2008 interrogatory, Applicant wrote that the incident occurred in December 1986.<sup>42</sup> She stated she was reminded by her first husband that it occurred around Christmas 1986, a week after their marriage.<sup>43</sup> Other evidence indicates that the incident took place in December 1996, around the time she married her second husband in 1996.<sup>44</sup> Despite considerable testimony, the date remains unresolved.

Applicant is adamant that she recalls the incident occurred around Christmas and closely after a marriage, thus making the year 1986 or 1996. Applicant succumbed out of momentary despair from personal events in her life, although varying issues in her life were existent in the December of all three of the years referenced.<sup>45</sup> She only used marijuana once and has no intention of using it again. It was an isolated incident of which Applicant has little recollection and of which she is contrite. Regardless, she maintains that the year of 2006 noted on her SF-86 is incorrect and noted accidentally.<sup>46</sup>

## Policies

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a

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<sup>38</sup> Tr. 118-119.

<sup>39</sup> Tr. 118.

<sup>40</sup> Tr. 120.

<sup>41</sup> Ex. 1 (SF-86 dated Jun. 20, 2008).

<sup>42</sup> Ex. 2 (Interrogatories, dated Dec. 1, 2008).

<sup>43</sup> Tr. 43, 45.

<sup>44</sup> See, e.g., Tr. 46, 107.

<sup>45</sup> See, e.g., Tr. 131-132.

<sup>46</sup> See, e.g., Tr.20, 44-46, 49-50, 52-54.

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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”<sup>47</sup> The burden of proof is something less than a preponderance of evidence.<sup>48</sup> The ultimate burden of persuasion is on the applicant.<sup>49</sup>

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 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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>50</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>51</sup>

Based upon consideration of the evidence, Guideline F (Financial Considerations) and Guideline H (Drug Involvement) are the most pertinent to this case. Conditions pertaining to these adjudicative guidelines that could raise a security

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<sup>47</sup> See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>48</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>49</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*



concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

## **Analysis**

### **Guideline F – Financial Considerations**

Under Guideline F, failure or an inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or an 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.<sup>52</sup> The Directive sets out several potentially disqualifying conditions under this guideline.

Between 2005 and 2008, Applicant acquired significant debt which became delinquent. Therefore, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and FC DC AG ¶ 9(c) ("a history of not meeting financial obligations") apply. With such conditions raised, the burden shifts to Applicant to overcome the case against her and mitigate security concerns.

With regard to Applicant's 1995 convictions for Negotiating Worthless Instruments (Checks) and her 2003 bankruptcy, these events pre-date her current medical and financial problems. They are also events of the past, attributable in part to an abusive ex-husband who is no longer a part of her life. Consequently, FC MC AG ¶ 20(a) ("the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment") applies.

Most of Applicant's current debts are related to either her health problems, the financial repercussions of her health problems, or her related periods of unemployment. Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) ("the conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation) and the individual acted responsibly under the circumstances") applies.

Applicant received financial counseling shortly before her bankruptcy filing in 2003. She concedes that it has been of little help in sorting out her current financial issues. There is no evidence Applicant has attempted to employ an organized strategy in approaching her debt. Although it is notable that her lack of progress is more attributable to an inability to pay, rather than a refusal to pay, FC MC ¶ 20(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") does not apply. Moreover, according to Applicant's own testimony, she has only made an attempt to make one \$250 payment to one creditor.<sup>53</sup> She failed, however, to provide evidence that such a good-faith effort was made. Additionally, Applicant showed that any

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<sup>52</sup> AG ¶ 18.

<sup>53</sup> Regarding SOR allegation ¶ 1.g.

progress at this time or in the near future is nearly impossible, given her limited current income and her essential expenses. Consequently, FC MC ¶ 20(d) (“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts”) does not apply. No other mitigating conditions apply.

Applicant’s current financial situation is relatively dire. Her expenses “significantly” exceed her income. She is currently reliant on community and familial assistance. Her current workload does not include defense-related projects. It only generates about \$450 per year, although there is no indication of any obstacles blocking her ability to generate more work outside the defense industry. She received financial counseling, but her current financial situation is presently so overwhelming, it is beyond the knowledge that counseling imparted. There is no proposed plan or outline in place for addressing her delinquent debts in the near future. No progress has been made on even the most nominal debts at issue. There is no evidence Applicant has maintained any on-going contact with her creditors. Consequently, Applicant failed to provide evidence to fully mitigate financial considerations security concerns.

### **Guideline H – Drug Involvement**

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.<sup>54</sup> “Drugs” are defined as mood and behavior altering substances, and include 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) and inhalants and other substances.<sup>55</sup> “Drug abuse” is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.<sup>56</sup>

SOR allegation ¶ 2.a alleges that Applicant not only used marijuana one time in about December 26, 2006, but that she did so after being granted a security clearance in June 2004. Applicant admits using marijuana once. Although she originally noted it was used in 2006, her ex-husband prompted her memory to suggest it was in 1986. Today, her memory vacillates between the incident occurring in December 1986 or December 1996, both of which preceded her security clearance. The evidence supports the fact she has had repeated strokes. Such attacks are known to affect memory. Applicant testified that she has difficulty with dates concerning a variety of events. She also has been on medications that may affect memory. Her vacillation between dates might otherwise be suspect except for the fact she demonstrated an equally poor memory with regard to incidents in her life unrelated to the issues and are personally far more significant than a one-time use of marijuana. Given this consistent and credible demonstration of confusion regarding a variety of dates, her recent medical history, and

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<sup>54</sup> Revised Adjudicative Guideline (AG) ¶ 24.

<sup>55</sup> *Id.* at ¶ 24(a)(1-2).

<sup>56</sup> *Id.* at 24(b).

her insistence the event occurred shortly after a marriage, the evidence does not support the allegation that Applicant used marijuana in 2006, when she possessed a security clearance.

This does not, however, absolve Applicant's illegal use of marijuana. At most, it only makes inapplicable Drug Involvement Disqualifying Condition (DI DC) AG ¶ 25(g) ("any illegal drug use after being granted a security clearance". DI DC AG ¶ 25(a) ("any drug abuse") remains applicable.

Applicant freely volunteered her one-time abuse of marijuana, demonstrated her contrition, and stated she would not again lapse. She explained that the incident occurred during a holiday time when she felt down or distraught. Whether the singular incident occurred in 1986 or 1996, Drug Involvement Mitigating Condition (DI MC) 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") applies.<sup>57</sup> Given the fact her illegal drug use is comprised of one incident in the life of a 45-year-old woman, 23 years, 13 years, or even 3 years would comprise an appropriate period of abstinence. Therefore, DI MC AG ¶ 26(b)(3) ("a demonstrated intent not to abuse any drugs in the future such as: an appropriate period of abstinence") also applies. Consequently, regardless of when the drug abuse occurred, these facts, Applicant's subsequent abstinence, and the amount of time that has passed since the incident all contribute to mitigating this security concern.

### **Whole Person Concept**

Under the whole person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the circumstances. An 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 a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

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<sup>57</sup> Indeed, given the singularity of the incident during a time of personal depression, her subsequent drug-free lifestyle, and her intent to never partake of the substance again, this same DI MC could well apply had it occurred three years ago in 2006.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the “whole person” factors. Speaking in Applicant’s favor, she is a mature, educated, and respected businesswoman who has made significant physical improvement since suffering a series of strokes. She is not content staying idle while classified as a person with a medical disability. She is intelligent and has an evident entrepreneurial spirit. But for her recent health problems, there is no indication that her post-bankruptcy finances would have once again led her into significant debt. As for her present debt, she is not unwilling to honor her obligations, but simply unable to do so.

Speaking against Applicant, however, is the fact that her delinquent debt remains essentially unaddressed. Medical bills of less than \$100 remain unpaid alongside bills of higher amounts, with no effort exerted to address them. Granted, Applicant presently has no resources and her expenditures significantly exceed her income. There is no suggestion, however, that Applicant has approached an attorney or credit counselor regarding alternative approaches toward handling her debt. She articulated no plan or strategy for addressing her obligations, only the hopes that defense contracting work might help increase her income. As presented, Applicant’s history and current financial situation may mitigate the creation of her debt, but they do not mitigate the security concerns regarding their current status or her failure to make some effort toward their resolution. Given Applicant’s presentation, she failed to mitigate financial considerations security concerns.

Regarding past drug involvement, Applicant, through her testimony and presentation, demonstrated that she has difficulty with dates. Whether this is an innate problem or one resulting from her health issues cannot be determined and is irrelevant. This difficulty extends beyond the issue of precisely when she used marijuana on one singular occasion and extends to other incidents from her past. Regardless, sufficient time has passed since she used marijuana under any of the time lines referenced, she demonstrated contrition, and expressed her intent not to use drugs again. Additionally, she raised other mitigating conditions that are applicable under the circumstances. Consequently, drug involvement security concerns are mitigated.

As noted above, any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. With security concerns regarding her finances unmitigated, I conclude it is not clearly consistent with national security to grant Applicant a security clearance. Clearance is denied.

### **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
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant

Paragraph 2, Guideline H: FOR APPLICANT

Subparagraph 2.a: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant a security clearance. Clearance is denied.

ARTHUR E. MARSHALL, JR.  
Administrative Judge