



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



In the matter of:

	)	
	)	ISCR Case No. 09-07319
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Melvin A. Howry, Esquire, Department Counsel  
For Applicant: *Pro se*

January 20, 2012

**Decision**

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ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the record, I conclude that Applicant failed to mitigate the Government’s security concerns under Guideline H, Drug Involvement, Guideline J, Criminal Conduct, Guideline E, Personal Conduct, and Guideline F, Financial Considerations. Her eligibility for a security clearance is denied.

**Statement of Case**

Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) on July 7, 2009. On May 19, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H, Drug Involvement, Guideline J, Criminal Conduct, Guideline E, Personal Conduct, and Guideline F, Financial Considerations. DOHA acted 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.

Applicant answered the SOR on June 13, 2011, and requested a decision on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on July 5, 2011. The FORM contained documents identified as Items 1 through 12. On July 7, 2011, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on July 15, 2011. On August 4, 2011, Applicant responded with a letter and four attachments comprising 27 pages. On August 14, 2011, Applicant provided another letter and eight attachments comprising 42 pages. On September 15, 2011, the case was assigned to me for a decision. I marked Applicant's letter of August 4, 2011, with four attachments, as Item A, and I marked her letter of August 14, 2011, with eight attachments, as Item B. Items A and B were entered in the record without objection.

### **Findings of Fact**

The SOR contains two allegations of disqualifying conduct under Guideline H, Drug Involvement (SOR ¶¶ 1.a. and 1.b.); one allegation of disqualifying conduct under Guideline J, Criminal Conduct (SOR ¶ 2.a.); two allegations of disqualifying conduct under Guideline E, Personal Conduct (SOR ¶¶ 3.a. and 3.b.); and one allegation of disqualifying conduct under Guideline F, Financial Considerations (SOR ¶ 4.a.). In her Answer to the SOR, Applicant admitted the Guideline H allegations, the Guideline J allegation, and the Guideline E allegation at ¶ 3.a. She denied the Guideline E allegation at ¶ 3.b. and the Guideline F allegation at ¶ 4.a. Applicant's admissions are entered as findings of fact. (Item 1; Item 3.)

Applicant is 57 years old and employed as an investigations assistant by a government contractor. She has worked for her current employer for 29 years. She was first awarded a security clearance in 1982. In July 2011, she completed all requirements for a degree in criminal justice administration. (Item 4; Item A.)

Applicant, who has no children, has been married three times. Applicant married for the first time in February 1985, and she and her husband divorced ten months later. Applicant married for the second time in 1987. She and her second husband divorced in 2001. Applicant married for the third time in 2001. She met and married her third husband while he was incarcerated in a state prison and serving a life sentence for murder. (Item 4; Item 8.)

In March 2006, Applicant secreted heroin in her body and went to visit her husband in prison. She also smoked a half cigarette of marijuana the night before going to the prison, and she had marijuana in her possession. During her visit with her husband, she gave him the heroin she had brought. Her actions were observed, and she was arrested inside the prison. State police charged Applicant with felony possession of drugs in a state prison; felony non-inmate selling and furnishing drugs to an unauthorized person; felony conspiracy to commit a crime; and misdemeanor possession of marijuana. In August 2006, Applicant pled guilty and was convicted of felony transportation of a controlled substance, heroin, for sale to noncontiguous

county. She was sentenced to 36 months probation, community service, fines, and mandatory drug testing. She completed 912 hours of community service on February 2009. She completed her probation in August 2009. She has not visited her husband at the prison since her arrest in 2006, although she does continue to correspond with him. She told an authorized investigator that she intends to reestablish her visitation rights with her husband at some time in the future. (Item 8; Item A.)

Applicant asserted that she abstained from using illegal drugs after her marijuana use in 2006. In response to DOHA interrogatories, she reported that she had not sought counseling or treatment to avoid drug use in the future. (Item 7; Item A.)

Applicant completed an e-QIP in July 2009. Section 23a on the e-QIP asks the following question: "In the last 7 years, have you illegally used any controlled substance, for example, cocaine, crack cocaine, THC (marijuana, hashish, etc.), narcotics (opium, morphine, codeine, heroin, etc.), stimulants (amphetamines, speed, crystal methamphetamine, Ecstasy, ketamine, etc.), depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), steroids, inhalants, (toluene, amyl nitrate, etc.)[,], or prescription drugs (including painkillers)? Use of a controlled substance includes injecting, snorting, inhaling, swallowing, experimenting with or otherwise consuming any controlled substance." (Item 4.)

Applicant answered "No" to Question 23a. She did not report that she had used marijuana in March 2006. When she was interviewed by an authorized investigator, Applicant denied any drug use. However, in response to DOHA interrogatories, Applicant admitted she had used marijuana on the night before her arrest at the state prison. She explained that she did not tell the investigator about her marijuana use because she was "concentrating on her conviction." In her response to the FORM, Applicant denied that she intentionally failed to list her marijuana use on her e-QIP. She stated that her marijuana use was a one-time event and occurred under unique circumstances. Additionally, she stated that she suffered some memory loss when completing her e-QIP and attempting to recall the events surrounding her arrest in March 2006, which she characterized as traumatic. (Item 4; Item 7; Item A.)

Applicant has had difficulty managing her finances and paying her legitimate debts. When she was interviewed by an authorized investigator in August 2009, Applicant stated that in 2005 her debts became unmanageable. She estimated that she owed approximately \$25,000 in credit card debt. She retained a debt management firm, and she authorized the firm to deduct \$689 each month from her checking account to pay her credit card accounts, which were in collection status. She told the investigator that she had reduced her credit card debt to \$15,000. (Item 8.)

Applicant's financial difficulties have made it difficult for her to pay her federal income taxes as required. In April 2009, she filed her 2008 federal tax return. She owed \$7,048 in federal taxes, but she lacked the money to pay them. She did not contact the Internal Revenue Service (IRS) to request a payment plan. After the IRS contacted her and requested payment, Applicant borrowed approximately \$6,200 from her 401k plan

to pay part of her 2008 federal income tax debt. She told the investigator that she still owed approximately \$848, and she stated that she intended to pay the remainder of her 2008 federal income tax debt in September 2009. (Item 8.)

Applicant did not file her 2010 federal income tax return when required. Applicant provided documentation showing that in June 2011, she contacted the IRS and indicated she would pay her 2010 federal income tax debt of \$2,189 by October 12, 2011. Applicant's documentation showed that the IRS accepted her offer of payment. The record does not contain documentation showing that Applicant made the payment when she said she would. (Item B.)

Applicant did not provide a personal financial statement. However, her federal income tax return for 2008, which she provided for the record, showed that she earned approximately \$54,000 in salary in 2008. Applicant provided documentation showing that a debt management firm, which she retained in 2010, had obtained a settlement offer from one of Applicant's creditors. The agreement required that Applicant pay \$1,180 on April 4, 2011, \$96 on May 4, 2011, and \$96 on June 4, 2011. (Item 9; Item B.)

Applicant provided several letters of character reference from coworkers and friends. Applicant's references stated that Applicant was conscientious, reliable, and a hard worker. A colleague who had known Applicant for many years stated that after her divorces, Applicant became lonely. He opined that Applicant's loneliness caused her to become involved with the prison inmate who became her third husband. Her security manager stated that Applicant was a team player and had never required disciplinary action during her 29 years with her employer. The security manager also provided copies of Applicant recent performance appraisals, which showed her to meet or exceed expectations. (Item B.)

In her response to the FORM, Applicant acknowledged her criminal conduct and stated that it was a "terrible mistake." She stated that she committed the criminal act out of love for her husband, had paid her debt to society, and sought to put her criminal actions behind her. (Item A.)

### **Burden of Proof**

The Government has the initial burden of proving controverted facts alleged in the SOR. The responsibility then shifts to the applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant then bears the burden of persuasion. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security.

## 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 an 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.

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). 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 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 obtaining 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 the applicant may deliberately or inadvertently fail to protect classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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**

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual’s reliability and trustworthiness because it may impair judgment and because it raises questions about a person’s ability or willingness to comply with laws, rules, and regulations. AG ¶ 24(a) defines drugs as “mood and behavior altering substances.” The definition of drugs includes “(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), and (2) inhalants and other similar substances.” AG ¶ 24(b) defines drug abuse as “the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.”

Through Applicant’s admissions, the record establishes that she possessed heroin and gave it to her husband, a state prison inmate, in March 2006. Moreover, the record establishes that Applicant used marijuana on the night before she visited her husband in prison and provided him with heroin. This behavior casts doubt on her reliability, trustworthiness, and good judgment. It also raises security concerns about her ability or willingness to comply with laws, rules, and regulations. I conclude that Applicant’s illegal marijuana use and her possession of heroin raise security concerns under AG ¶¶ 25(a) and 25(c). AG ¶ 25(a) reads: “any drug abuse [as defined at AG ¶ 24(b)].” AG ¶ 25(c) reads: “illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.”

Two Guideline H mitigating conditions might apply to the facts of Applicant’s case. If Applicant’s drug use happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on her current reliability, trustworthiness, or good judgment, then AG ¶ 26(a) might be applicable in mitigation. If Applicant demonstrated an intent not to abuse any drugs in the future by (1) disassociation from drug-using associates and contacts, (2) changing or avoiding the environment where drugs were used, (3) abstaining from drug use for an appropriate period, or (4) signing a statement of intent with the automatic revocation of her security clearance for any violation, then AG ¶ 26(b) might be applicable.

Applicant asserts that her last use of marijuana was in March 2006, approximately six years ago. After using the marijuana, she proceeded the next day to smuggle heroin into the state prison to give to her husband, who was incarcerated there. Applicant’s illegal drug use, which occurred when she was about 51 years old, continues to cast doubt on her current reliability, trustworthiness, and good judgment.

While she has not visited her husband in prison since March 2006, Applicant remains in contact with him and intends to visit him in the future. She failed to demonstrate that she had changed her conduct to avoid environments where drugs are used. She did not provide a signed statement of her intent not to abuse drugs in the future, with automatic revocation of her security clearance for any violation.

Applicant's illegal drug use occurred when she was a mature adult of 51 years, suggesting a lifestyle choice that went beyond youthful curiosity and experimentation. Insufficient time has elapsed to demonstrate whether she will abstain from illegal drug use in the future. I conclude that AG ¶ 26(a) and AG ¶ 26(b) do not apply in mitigation to the facts of Applicant's case.

### **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 used the illegal drug marijuana in March 2006. She was arrested in March 2006 and charged with felony possession of drugs in a state prison; felony non-inmate sell or furnish drugs to an unauthorized person; felony conspiracy to commit a crime; and misdemeanor possession of marijuana. She pled guilty to felony transportation of a controlled substance, heroin, for sale to noncontiguous county. She was sentenced to 36 months probation, community service, fines, and mandatory drug testing. Her probation expired in March 2009.

Applicant's criminal conduct raises concerns under AG ¶¶ 31(a) and 31(c). AG ¶ 31(a) identifies a potential security concern when an individual has committed "a single serious crime or multiple lesser offenses." AG ¶ 31(c) provides: "allegation or admission or criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted."

Two 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 demonstrates that Applicant's criminal behavior occurred nearly six years ago, in 2006. She completed her probation and community service. She has a good employment record and has pursued higher education. However, Applicant's criminal act was a serious crime which she committed as a mature adult of 51 years. In

her response to the FORM, she characterized the crime as a “terrible mistake” but asserted that she had committed the crime out of love for her husband, an inmate serving a life sentence in prison for murder. Applicant further stated she believed she had paid her debt to society and wanted to get on with her life.

Applicant’s rationale for explaining her criminal conduct raises continuing concerns about her judgment, reliability, and trustworthiness. Additionally, her statement that she committed a serious crime out of love raises concerns about her rehabilitation and ability or willingness to comply with laws, rules, and regulations. It is not clear from the record that Applicant’s criminal behavior and rule violations are unlikely to recur. While I conclude that AG ¶ 32(d) applies in part, I also conclude that AG ¶ 32(a) does not apply to the facts of Applicant’s case.

### **Guideline E, 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.

Applicant used marijuana in March 2006, before transporting heroin to her husband, an inmate in a state prison. At the prison, she was arrested and charged with several felony counts and misdemeanor possession of marijuana. She was convicted of felony transportation of a controlled substance, heroin, for sale to noncontiguous county. When she executed her e-QIP in July 2009, Applicant admitted her arrest and the felony charges and conviction that resulted. However, in response to Section 23a on the security clearance application, she answered “No” when asked if she had illegally used any controlled substance in the last seven years. In her answer to the SOR, Applicant denied that she had deliberately falsified her security clearance application by failing to report her marijuana use in March 2006. Applicant’s personal conduct raises security concerns under AG ¶¶ 16(a) 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(e)(1) reads: “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. . . .” Applicant’s conviction of felony transportation of the controlled substance heroin for sale to noncontiguous county raises the security



concern that this conduct, if known, could affect her personal or professional standing and cause her to be vulnerable to exploitation, manipulation, or duress.

Three Guideline E mitigating conditions might apply to Applicant 2006's criminal conviction. If "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," then AG ¶ 17(c) might apply. Additionally, AG ¶ 17(d) might apply in mitigation if "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 occur." AG ¶ 17(e) might apply if "the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress."

Applicant's felony conviction was a serious matter. Even though the conviction took place six years ago, the fact that it occurred when she was a mature adult continues to cast doubt on Applicant's reliability, trustworthiness, and good judgment. Applicant has pursued an academic degree, and this is to her credit. She is regarded as a valuable employee and colleague by those who work with her. Applicant plans to resume her relationship with her husband in prison. I conclude that AG ¶ 17(c) does not apply in mitigation. I also conclude that AG ¶¶ 17(d) and 17(e) apply in part in mitigation.

In August 2010, in response to DOHA interrogatories, Applicant admitted she had used marijuana on the night before her arrest at the state prison. She explained that she did not tell the investigator about her marijuana use because she was "concentrating on her conviction." In her response to the FORM, Applicant denied that she intentionally failed to list her marijuana use on her e-QIP. She stated that her marijuana use was a one-time event and occurred under unique circumstances. Additionally, she stated that she suffered some memory loss when completing her e-QIP and attempting to recall the events surrounding her arrest in March 2006, which she characterized as traumatic.

DOHA's Appeal Board has cogently explained the process for analyzing falsification cases:

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

Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

I have reviewed the record as a whole and have looked at direct and circumstantial evidence concerning Applicant's state of mind at the time she omitted information about her marijuana use in response to Section 23. Applicant is a mature adult who has, in the course of her 29 years of employment as a government contractor, completed security clearance applications. She was first awarded a security clearance in 1982. She knew, or should have known, of the importance of telling the truth to the Government when seeking a security clearance.

When Applicant completed her security clearance application in 2009, she responded "No" when asked if she had used illegal drugs in the past seven years, even though she had used marijuana in March 2006, three years before completing her security clearance application. She denied using illegal drugs in her personal security interview. In reviewing the report of investigation and responding to DOHA interrogatories in August 2010, Applicant admitted her March 2006 drug use.

Applicant completed her e-QIP in July 2009. She was interviewed by an authorized investigator August 2009 and denied any drug use. For over a year, until she provided information on her marijuana use in August 2010, Applicant made no good-faith efforts to correct the falsification in her e-QIP. She did not claim that the falsification occurred as a result of improper or inadequate advice of authorized personnel. Her falsification was neither minor nor infrequent. Instead, it appeared to constitute a pattern and cast doubt on Applicant's reliability, trustworthiness, and good judgment. After reviewing the evidence as a whole, I conclude that Applicant's "No" answer to Section 23 was deliberate, and that none of the Guideline E mitigating conditions apply.

### **Guideline F, Financial Considerations**

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

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

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly, under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant reported that her debts became “unmanageable” in 2005. Additionally, she failed to provide documentation that she has paid her federal income taxes when required. This evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s financial delinquencies. Unresolved financial delinquency might be mitigated if it “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.” (AG ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated 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.” (AG ¶ 20(b)) Still other mitigating circumstances that might be applicable include evidence that “the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control” (AG ¶ 20(c)) or “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” (AG ¶ 20(d)) 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 options to resolve the issue,” then AG ¶ 20(e) might apply.

Applicant failed to provide documentation that she had voluntarily satisfied her 2008 federal tax debt or her 2010 federal tax debt. Applicant stated that she had not received financial counseling. Because she did not provide a personal financial statement, it was not possible to determine her net monthly income or her monthly expenses and debt payments. While Applicant acknowledged her financial delinquencies, it was not clear that she understood her financial problems or how to resolve them. She did not appear to have a plan in place to respond to future financial contingencies. I conclude that none of the Financial Consideration mitigating conditions fully applies to the facts of Applicant’s case.

### **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 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 facts and circumstances raised by the record in this case.

Applicant's coworkers and friends consider her to be a conscientious and reliable worker. She has completed a course of study in criminal justice administration.

However, as a mature adult in her fifties, Applicant used marijuana, possessed heroin, and voluntarily committed a serious crime to show her love for her husband, who was incarcerated in a state prison and serving a life sentence for murder. Applicant's illegal drug use and criminal behavior reflected a disregard for laws, rules, and regulations, and it also raised concerns about her judgment, reliability, and trustworthiness. When she completed her e-QIP in July 2009, Applicant deliberately failed to report her marijuana use in March 2006. Additionally, Applicant has a history of financial problems, and she failed to provide documentation to establish that she paid her 2008 and 2010 federal income taxes timely and in accord with her written agreements to do so.

Applicant requested a decision on the written record. She provided additional information in response to the FORM. However, Applicant failed to meet her burden of persuasion in mitigating the Government's allegations under the drug involvement, criminal conduct, personal conduct, and financial considerations adjudicative guidelines. I have assessed the evidence in light of the whole-person concept. Overall, the record evidence in this case leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance.

### **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
Subparagraphs 1.a. and 1.b.:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT

Subparagraph 2.a.:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a. and 3.b.:	Against Applicant
Paragraph 4, Guideline F:	AGAINST APPLICANT
Subparagraph 4.a.:	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