



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-08353
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gina Marine, Esq., Department Counsel  
For Applicant: *Pro se*

June 17, 2011

**Decision**

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LAZZARO, Henry, Administrative Judge

Applicant either satisfied or made substantial efforts to otherwise resolve all her delinquent debts. The deliberate falsifications she provided during the course of a security clearance investigation that took place in 2000-01 have been mitigated by the passage of time and her disassociation from the people with whom she used marijuana. Clearance is granted.

On January 27, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.<sup>1</sup> The SOR alleges security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). On February 9, 2011, Applicant submitted a response to the SOR in which she requested a hearing and admitted all SOR allegations except those contained in subparagraphs 1.l, 1.o, 1.p, 1.s, 1.z, and 2.a-d.

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<sup>1</sup> This action was taken under Executive Order 10865, DoD Directive 5220.6, dated January 2, 1992, as amended (Directive), and adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

The case was assigned to me on March 1, 2011. A notice of hearing was issued on April 5, 2011, scheduling the hearing for April 26, 2011. The hearing was conducted as scheduled. The government submitted ten documentary exhibits that were marked as Government Exhibits (GE) 1-10 and admitted into the record without objection. Applicant testified and submitted 27 documentary exhibits that were marked as Applicant's Exhibits (AE) a-aa and admitted into the record without objection. The record was held open to provide Applicant the opportunity to submit additional documentation in support of her case. Two documents or groups of documents were timely received, marked as AE bb and AE cc, and admitted into the record without objection. Department Counsel's forwarding memorandum indicating she did not object to the admission of Applicant's post-hearing submissions was marked as Appellate Exhibit (App. Ex.) I, and made part of the record. The transcript was received on May 4, 2011.

### **Procedural Matters**

Department Counsel's motion to amend SOR subparagraph 1.d by changing the date alleged from March 2000 to September 2002 was granted without objection.

### **Findings of Fact**

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough review of the pleadings, testimony and exhibits, I make the following findings of fact:

Applicant is a 45-year-old woman who has been employed as a software engineer by a defense contractor since August 2009. She listed a work history in her August 2009 security clearance application that discloses employment since March 2004, interrupted by periods of unemployment from June 2006 to August 2006, and again from June 2009 to August 2009. Her testimony also discloses a period of under-employment from March 2009 to June 2009. Applicant testified her salary at the various jobs she listed in her security clearance application ranged from about \$36,000 annually to as much as \$65,000. While unemployed, she received unemployment compensation that ranged from about \$220 to \$285 per week.

Applicant graduated from high school in 1984. She has completed about two semesters of college work. She has been married four times: from November 1984 to October 1986; from January 1987 to September 1990; from October 1991 to August 1996; and from October 2001 to October 2003. Each of those marriages ended by divorce. Applicant has two daughters, ages 22 and 18. Both children are married. Applicant continues to provide her daughters some financial assistance, and one of her daughters and her husband were residing with Applicant until recently.

Applicant sought Chapter 13 bankruptcy protection in June 1996, due to the debts she was left to handle as a result of her third divorce. Feeling embarrassed about seeking bankruptcy protection, Applicant voluntarily had that petition dismissed in July 1996. Applicant filed again for Chapter 13 bankruptcy protection in November 1996. She received a Chapter 13 bankruptcy discharge based on that petition in November 2000.

The SOR lists 25 delinquent debts, totaling \$24,962, and two federal income tax liens, totaling \$15,093. Applicant submitted documentation establishing that she has either satisfied or successfully disputed virtually every delinquent account listed in the SOR. Specifically, she documented the debts alleged in SOR subparagraphs 1.a-1.j, 1.k, 1.q, 1.r, 1.t-1.w, 1.y, and 1.aa are satisfied. She submitted proof that she has made 10 payments, totaling \$775, on the debt alleged in SOR subparagraph 1.m, and that she had two payments remaining on that debt that were due to be paid after the date of the hearing. Applicant also submitted documentation that the tax lien alleged in SOR subparagraph 1.d has been satisfied and released, and that she is making regular monthly payments to satisfy the tax lien alleged in SOR subparagraph 1.c.

Applicant attributes her recent financial problems to her 2003 divorce and her periods of unemployment and underemployment. The divorce was preceded by her husband depleting her savings and taking virtually all of her personal possessions when he decided to leave the marriage. Additionally, a number of the debts alleged in the SOR were for medical and dental expenses incurred by his children from a previous marriage, and to joint credit card debt that she inherited.

Applicant retained the services of a law firm to challenge those debts she believed were not her responsibility. She took an online credit counseling course and prepared a detailed monthly budget to aid her in becoming and remaining financial solvent. Applicant acquired the funds to resolve the debts listed in the SOR by obtaining a loan secured by her automobile that had been paid off, by removing funds from a retirement account, and by borrowing money from her mother. Applicant submitted a detailed monthly budget that discloses a net monthly remainder of \$1,120.58, after payment of the loans she acquired to satisfy her delinquent debt.

In the security clearance application she submitted in August 2009, Applicant failed to disclose that she had ever been over 180 days delinquent on any debts or that she was then over 90 days delinquent on any debts. However, she did disclose that she had judgments entered against her, accounts turned over to collection agencies, and accounts or credit cards suspended, charged off or cancelled for failing to pay as agreed. Further, she provided detailed adverse information concerning eight different accounts. Applicant credibly testified she obtained only one of her three credit reports because she was unaware that there were multiple credit reporting agencies, and that she disclosed all the adverse information that was contained in that credit report.

Applicant also failed to disclose the tax liens that had been placed against her. She credibly testified that because the one lien had been satisfied and she was current on a repayment agreement on the other lien she did not consider herself to be "currently delinquent" on a Federal debt as the question at issued asked.

Applicant frequently used marijuana between 1996 and 2000. She used it on two occasions between December 2000 and February 2001. She denies any use of any controlled substance since February 2001. Applicant submitted a security clearance application in February 2000, in which she denied using any controlled substance, including marijuana, in the preceding seven years. She falsely denied using marijuana at a party when she was interviewed by investigators from the Department of the Air Force

Office of Special Investigations in March 2001. Applicant admitted she used marijuana at the party in a written statement she provided to an investigator of the Defense Investigative Service in May 2001. She admitted at the hearing that she provided false information in the security clearance application she submitted in February 2001, and when she was interviewed by the Air Force investigators in March 2001.

Applicant testified she denied using marijuana in the security clearance application and when she was interviewed because she: “was ashamed and embarrassed, and at the point, I was afraid of losing my job.” (Tr. 106) Applicant also credibly testified that she disassociated herself from the individuals with whom she had used marijuana in 2001, that she has not used marijuana since that time, and that she has no intent to ever use marijuana again. (Tr. 106)

Applicant’s supervisor provided a letter of recommendation in which he stated Applicant has proven herself to be a dedicated employee who consistently displays a strong work ethic and dedication to her job. He has found her to be a trustworthy individual who is dedicated to her family and country. The President and CEO of Applicant’s former employer provided a letter of recommendation in which he noted that she had proven herself to be an outstanding employee who was dedicated and committed to successful job performance. He vouches that Applicant is honest, reliable, trustworthy, and that she possesses integrity. Applicant’s performance reviews for the period January 1, 2009 to December 31, 2010, disclose that she is a very knowledgeable and competent employee who meets or exceeds expectations.

## **Policies**

The Directive sets forth adjudicative guidelines to consider when evaluating a person’s eligibility to hold a security clearance. Chief among them are the disqualifying conditions and mitigating conditions for each applicable guideline. Each clearance decision must be a fair and impartial decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶¶ 6.3.1 through ¶¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Guideline F (financial considerations) and Guideline E (personal conduct), with their disqualifying and mitigating conditions, are most relevant in this case.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>2</sup> The Government has the burden of proving controverted facts.<sup>3</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence,<sup>4</sup> although the government is required to present substantial evidence to meet its burden of

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<sup>2</sup> ISCR Case No. 96-0277 (July 11, 1997) at 2.

<sup>3</sup> ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, Item E3.1.14.

<sup>4</sup> *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

proof.<sup>5</sup> “Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.”<sup>6</sup> Once the Government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>7</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>8</sup>

No one has a right to a security clearance<sup>9</sup> and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>10</sup> Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.<sup>11</sup>

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## Analysis

### Guideline F, Financial Considerations

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. . . . (Adjudicative Guideline [AG] 18)

Applicant sought and obtained a Chapter 13 bankruptcy discharge in 1996. She thereafter acquired two tax liens and numerous delinquent debts that remained unresolved for many years. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; and DC 19(c): *a history of not meeting financial obligations* apply.

Applicant attributes much of her delinquent debt to various factors dealing with her marriage to and divorce from her fourth husband. Included in those factors are his actions in depleting her savings when they separated, her having to pay the medical and dental bills for his children from a previous marriage, and his failure to assume responsibility for a proportionate share of the marital debt. Applicant’s financial problems were compounded by the periods of unemployment or underemployment that she experienced following her fourth divorce.

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<sup>5</sup> ISCR Case No. 01-20700 (December 19, 2002) at 3 (citations omitted).

<sup>6</sup> ISCR Case No. 98-0761 (December 27, 1999) at 2.

<sup>7</sup> ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, Item E3.1.15.

<sup>8</sup> ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, Item E3.1.15.

<sup>9</sup> *Egan*, 484 U.S. at 528, 531.

<sup>10</sup> *Id.* at 531.

<sup>11</sup> *Egan*, Executive Order 10865, and the Directive.

Applicant has aggressively acted to satisfy most of her delinquent creditors. She fully satisfied one tax lien, and she has entered into and has thus far fulfilled her obligation under a repayment plan to satisfy the second lien. She has satisfied most of her delinquent creditors and successfully disputed a number of other debts on the basis that they are not rightfully her responsibility. She retained the service of a law firm to dispute those debts that she believed were not her responsibility and she undertook credit counseling through an online service. Applicant has prepared a detailed monthly budget which indicates she is living a financially responsible lifestyle and that she has the financial resources to satisfy the debts she undertook to pay her delinquent creditors and remain financially solvent.

The following Mitigating Condition (MC) apply: MC 20(a): *the behavior . . . 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*; MC 20(b): *the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation) and the individual acted responsibly under the circumstances*; 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*; MC 20(d): *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*; and MC 20(e): *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.*

## **Guideline E, Personal Conduct**

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. (AG 15)

Applicant did not deliberately fail to disclose her delinquent debts in the security clearance application she submitted in August 2009. Her testimony that she provided all the adverse financial information she was aware of based on the single credit report she acquired is credible. Additionally, Applicant provided abundant and detailed adverse financial information in that security clearance application, which clearly indicates she was not attempting to conceal her financial problems. Further, her explanation for not disclosing the tax liens in that security clearance application is reasonable and believable. These omissions do not create a security clearance concern.

However, Applicant admittedly and deliberately failed to disclose her use of marijuana between 1996 and 2001 when she submitted a security clearance application in February 2000. She also admittedly and deliberately failed to disclose her marijuana use at a recent party to Air Force investigators when she was questioned by them in March 2001. DC 16(a): *deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary*

*responsibilities; and DC 16(b): deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative apply.*

It has been over 11 years since Applicant failed to disclose her marijuana use in a security clearance application and over 10 years since she failed to disclose her marijuana use when she was interviewed by Air Force investigators. Since that time, Applicant has maintained relatively stable employment that has only been interrupted by two periods of unemployment each of which lasted only a few months. Her recent action in aggressively and quickly resolving her delinquent debts, combined with the assumption of a financially responsible lifestyle she has exhibited through the monthly budget she submitted demonstrates she is now a mature and responsible person. She has disassociated herself from the people with whom she used marijuana. Most importantly, the outstanding letters of recommendations she submitted from her two most recent employers and the performance reviews she submitted for the past two years demonstrate that she has become a valued and trusted employee who has earned a reputation for being honest, dependable, and possessed of integrity.

The following mitigating conditions apply: MC 17(c): . . . *so much time has passed, or the behavior is so infrequent, . . . that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*; MC 17(d): *the individual has acknowledged the behavior and . . . taken positive steps to alleviate the stressors, circumstances, or factors that caused the untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur*; and MC 17(g): *association with persons involved in criminal activity has ceased . . . .*

Considering all relevant and material facts and circumstances present in this case, the whole-person concept, the factors listed in ¶ 6.3.1 through ¶6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant mitigated the financial considerations and personal conduct security concerns. She has overcome the case against her and satisfied her ultimate burden of persuasion. It is clearly consistent with the national interest to grant Applicant a security clearance. Guidelines F and E are decided for Applicant.

### **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:	FOR APPLICANT
Subparagraphs 1.a-cc	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 1.a-d:	For Applicant

## **Conclusion**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Henry Lazzaro  
Administrative Judge



