



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



In the matter of: )  
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Applicant in Personal Appearance )

ISCR Case No. 10-06264

**Appearances**

For Government: Julie R. Mendez, Esquire, Department Counsel

For Applicant: *Pro se*

August 31, 2011

**Decision**

O'BRIEN, Rita C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant has failed to mitigate the security concerns raised under the guidelines for financial considerations and drug involvement. Applicant's request for a security clearance is denied.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) signed on March 23, 2010. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding<sup>1</sup> that it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

On April 11, 2011, DOHA issued to Applicant a Statement of Reasons (SOR), which specified the basis for its decision: security concerns addressed in the Directive

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<sup>1</sup> Required by Executive Order 10865, as amended, and DoD Directive 5220.6 (Directive), as amended.

under Guidelines F (Financial Considerations) and H (Drug Involvement) of the Adjudicative Guidelines (AG).<sup>2</sup>

Applicant submitted an Answer to the SOR, dated May 8, 2011, in which she admitted all allegations and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on June 6, 2011, and the case was assigned to me on June 15, 2011. DOHA issued a Notice of Hearing on July 27, 2011. I convened the hearing as scheduled on August 17, 2011. I admitted four exhibits offered by the Government (GE 1-4). Applicant and one witness testified on her behalf, and she offered one exhibit, which I admitted as Applicant's Exhibit (AE) A. DOHA received the transcript on August 25, 2011.

### **Findings of Fact**

Applicant's admissions in response to the SOR are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following additional findings.

Applicant is 54 years old and single, with no children. She completed college credits, but did not receive a degree. Since 2009, she has worked for a federal contractor. This is her first application for a security clearance. (GE 1; Tr. 16-17, 20)

Applicant worked for a private company for 17 years as an independent contractor. She earned a gross annual salary of about \$90,000. When the vice president she worked for moved to another company in October 2008, Applicant lost her position. She was unemployed for several months, and did not receive unemployment insurance. In February 2009, she was hired on a part-time basis as an executive assistant by a federal contractor at \$35 per hour. From December 2009 to September 2010, she worked full-time, subcontracted by her company to another federal contractor. That task ended because of her lack of a security clearance. She now works about quarter-time as business operations manager for her federal contractor employer. (GE 2 at 11; Tr. 17-23, 49)

In about 2006, Applicant and a friend became partners in a business breeding and raising horses on a horse farm. Applicant's business partner did not have solid credit. Applicant did well financially during the years she worked as the vice president's assistant, and she qualified for loans. The business costs were solely in Applicant's name. However, her partner did not deal with Applicant in good faith (see

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<sup>2</sup> Adjudication of this case is controlled by the Adjudicative Guidelines, implemented by the Department of Defense on September 1, 2006.

SOR debts alleged at 1.d, 1.f, and 1.i, discussed below) The business failed. (Tr. 24-26, 28-29, 40)

At her May 2010 security interview, Applicant stated she received consumer credit counseling. However, she could not provide the investigator with any further information on the counseling. Applicant filed a Chapter 7 bankruptcy petition in April 2011. It includes all of the debts listed in the SOR. She did not provide documentation showing that it has been discharged. (GE 2 at 20; AE A)

In her personal financial statement (PFS) of November 2010, Applicant listed net monthly income of \$3,457, and expenses of \$3,436, leaving a monthly remainder of \$20. However, her bankruptcy petition of April 2011 showed a different picture of her financial situation, with a negative monthly net remainder of \$1,112. At the hearing, Applicant noted that the PFS was out-of-date, and she was no longer responsible for ten payments listed on it. The payments amount to \$2,242. Three of these debts are in the SOR and in her bankruptcy (1.a, 1.c, and 1.f). After deducting them, her monthly net remainder is \$1,215. (GE 2; AE A; Tr. 33-38)

Applicant's debts as listed in the SOR total \$120,028. They became delinquent between January 2009 and January 2010. The following SOR debts appear in Applicant's credit bureau reports of April 2010 (GE 4) and March 2011 (GE 3).

**Farm-related debts, totaling \$15,239 (1.a, 1.d, 1.i)** Applicant and her partner financed their horse business in part through lines of credit. The lines of credit at allegations 1.a and 1.i. are \$8,847 and \$1,392, respectively. Allegation 1.a refers to a line of credit for farming supplies. Applicant's credit report shows that this debt is disputed. (GE 3, 4)

Applicant testified that her partner applied for the \$1,392 line of credit by forging Applicant's signature. Applicant learned of the forgery after the judgment was filed. She informed the lender and supplied documents to contrast her actual signature with the forged signature. Although she disputes the debt, she stated in her interrogatory response that she set up a plan to pay \$232 per month, to be deducted automatically from her bank account. (GE 2 at 4) She did not provide proof of payments. Applicant has not informed the credit reporting agencies that she disputes this debt. (GE 2 at 13; Tr. 25)

Allegation 1.d refers to a \$5,000 debt owed for a tractor purchased for the horse farm. Applicant asked the company to repossess it because she could not afford the payments. When the company tried to retrieve it, Applicant's partner said it had been stolen. Applicant contacted local police and was informed that a tractor had not been reported stolen. All

three debts are included in Applicant's bankruptcy petition. (GE 2; AE A; Tr. 23-26, 28-29)

**Credit cards, totaling \$54,789 (1.b, 1.c, 1.g, 1.h)** Applicant responded to mailed solicitations for credit cards by rolling over balances from other credit card accounts to new ones with lower interest rates for limited periods of time. Despite the lower rates, she was eventually unable to meet her payments. The four credit card debts are included in Applicant's bankruptcy petition. (AE A; Tr. 26-28)

Applicant stated she arranged a payment plan of \$200 per month on the account at allegation 1.c. She did not provide documentation showing payments.<sup>3</sup> As of November 2010, she planned to contact the creditor at allegation 1.g to arrange a payment plan. (GE 2 at 2, 4)

**Furniture, \$17,000 (1.f)** Applicant's partner had poor credit, so Applicant paid \$10,000 for furniture for her partner's house in another state. Her partner did not fulfill her promise to reimburse her. Applicant provided documentation that she arranged a payment plan of \$200 per month in November 2010 that would begin in December 2010. She did not offer evidence that she made payments. The debt is included in Applicant's bankruptcy petition. (GE 2 at 3, 8; AE A; Tr. 32)

**Mortgage, \$33,000 (1.e)** Applicant purchased a condominium in her home state in 2005. In approximately 2009, she retained an attorney to help her obtain a loan modification. At her May 2010 security interview, she stated she was not making mortgage payments because the loan was being considered for a modification. In about mid-2010, her lender informed her it had never received a request to modify her loan. She has not made additional requests for loan modifications, and is waiting to learn if the property will be foreclosed. She has no intent to live in the condominium. A friend is currently living there, and Applicant is paying the homeowner association fees. The debt is listed in Applicant's bankruptcy, with a loan balance of \$223,835. (GE 2 at 4, 11-12, 19; GE 3; AE A; Tr. 29-32)

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<sup>3</sup> Applicant provided documentation related to debts not alleged in the SOR: (1) proof that she initiated a payment plan for a credit card account; (2) proof of an October 2010 payment made on another credit card account; (3) an unsubstantiated statement that she made a payment plan for a retail charge account in December 2010; and (4) proof of satisfaction of a judgment for \$7,427 in July 2010. (GE 2 at 3, 14, 15)

Applicant has used marijuana occasionally since about 1971, when she was 13 years old. She obtained the illegal drug from friends, and used it alone at home. She has never grown or sold the drug. She used it every couple of months. (GE 2; Tr. 41-42)

On her security clearance application, Applicant reported using marijuana until March 2010, the month she completed her application. At her May 2010 security interview, she said she used the illegal drug every few months, but she would stop using it in the future. When Department Counsel asked Applicant if she used marijuana after her May 2010 interview, she testified, "I haven't been doing it for months now." When asked again if she used it since she met with the investigator, she stated, "Oh, I'm sure I did since talking to the investigator. Was – but – but I haven't, you know, in months now." (GE 1. 2; Tr. 40-41)

Applicant's current supervisor testified on her behalf. He owns and operates a small firm that contracts with the federal government. He is Applicant's cousin. He has served in the Navy and worked for a federal contractor. He has held a security clearance since 1967. The witness was aware of the SOR allegations. He described her as reliable, and stated he has never seen her impaired by illegal drug use in the time she has worked for him. She has a strong work ethic, and does whatever is required to accomplish her tasks. She asked him for advice about completing her security clearance application, and she has been candid with him and during the security clearance process. (Tr. 46-54)

## **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the Adjudicative Guidelines (AG).<sup>4</sup> Decisions must also reflect consideration of the "whole-person" factors listed in ¶ 2(a) of the Guidelines.

The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline F (Financial Considerations) and Guideline H (Drug Involvement).

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<sup>8</sup> Directive. 6.3.

A security clearance decision is intended only to resolve the question of whether it is clearly consistent with the national interest<sup>5</sup> for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.<sup>6</sup> A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or his own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.<sup>7</sup>

## **Guideline F, Financial Considerations**

AG ¶18 expresses the security concern about 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 over-extended is at risk of having to engage in illegal acts to generate funds. ..

The following disqualifying conditions are relevant under AG ¶ 19:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has a history of financial problems. The current SOR lists delinquent debts totalling more than \$120,000. She filed for Chapter 7 bankruptcy protection in

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<sup>9</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>10</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>11</sup> See *Egan*; Adjudicative Guidelines, ¶ 2(b).

2011. Applicant's history demonstrates an inability or unwillingness to meet her financial obligations. AG ¶¶ 19(a) and (c) apply.

I considered the following relevant mitigating conditions under 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;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(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.

Applicant's debts are numerous and are not in the distant past. The record evidence does not show that they have been discharged through her bankruptcy petition. Her failure to make efforts to resolve most of her debts until prompted by the security clearance process raises questions about her reliability and judgment. AG ¶ 20(a) does not apply.

AG ¶ 20(b) focuses on situations where conditions beyond an applicant's control affect her ability to meet financial obligations. Applicant lost her long-standing job in October 2008, and was unemployed for several months. When she found employment, it was full-time for about nine months and quarter-time the remaining period. She also could not anticipate the bad acts of her partner. These events affected her finances. However, her unemployment was brief, and it occurred almost three years ago. AG ¶ 20(b) requires that an applicant act reasonably in response to unforeseen circumstances. Applicant contacted creditors and worked out payment plans for some debts. However, she did not take these steps when they started to become delinquent, but only when she realized that delinquent debts would affect her eligibility for a

security clearance. Moreover, she did not take action against her partner that could have resulted in releasing her from debts stemming from the claimed fraud. AG 20(b) does not apply.

AG ¶¶ 20 (c) and (d) require a good-faith effort to repay debts. Applicant's efforts occurred primarily after being prompted by the clearance process. She told the security investigator that she received credit counselling, but it is unlikely it afforded her concrete help, as she could not provide the investigator with any information about the service. In April 2011, a few months before the hearing, Applicant filed a Chapter 7 bankruptcy petition that included all of the SOR debts. Applicant's bankruptcy petition is recent, and she did not supply documentation to show its progress or its discharge.

The Appeal Board has defined "good faith" as acting in a way that shows "reasonableness, prudence, honesty, and adherence to duty or obligation." In the same decision, the Board held that, "Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [this mitigating condition].<sup>8</sup> Applicant's assumption of excessive debt led her to a situation where, ultimately, her only recourse was bankruptcy. Although it is a legitimate option to resolve overwhelming debt, it does not qualify under the Appeal Board's jurisprudence as a good-faith effort. AG ¶¶ 20(c) and (d) do not apply.

Applicant disputed two SOR debts related to her horse business. Her credit reports note that the line of credit at allegation 1.a is disputed. She testified that she did not formally dispute the judgment at allegation 1.i with the credit reporting agencies. She did inform the creditor, and supplied it with documents showing that her signature on the loan application was forged. AG ¶ 20(e) applies in part.

### **Guideline H, Drug Involvement**

The security concern about drug involvement is that:

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. AG ¶ 24.

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<sup>8</sup> ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004), quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001).



The record evidence raises two disqualifying conditions: AG ¶ 25(a) (any drug abuse), and AG ¶ 25(c) (illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution; or possession of drug paraphernalia). Applicant both possessed and used an illegal drug on an intermittent basis from 1971 until 2010. AG ¶¶ 25(a) and (c) apply.

I have considered the mitigating conditions under AG ¶ 26, especially the following:

(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; and

(b) a demonstrated intent not to abuse any drugs in the future, such as:

(1) disassociation from drug-using associates and contacts;

(2) changing or avoiding the environment where drugs were used;

(3) an appropriate period of abstinence; and

(4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant's use of marijuana in 2010 was recent. It was not infrequent, as Applicant used marijuana every few months for almost 40 years. In addition, she used it, not in unusual circumstances, but in her own home. Her use of illegal drugs raises serious doubts about her judgment and reliability. AG ¶ 26(a) does not apply.

Applicant testified that she does not intend to use marijuana in the future. However, her use of marijuana after telling the security agent that she would not use it, undermines her claim that she will abstain. Given these facts, and Applicant's long history of marijuana use, I cannot confidently conclude that she will avoid marijuana use in the future. AG ¶ 26(b) cannot be applied.

### **Whole-Person Analysis**

Under the whole-person concept, an administrative judge must evaluate an Applicant's security eligibility by considering the totality of the 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.

AG ¶ 2(c) requires that 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. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Although a mature adult of 57 years, Applicant has not demonstrated reliability in handling her financial obligations or in her long-standing use of an illegal drug. Her debts became delinquent approximately two years ago, and they still appear on her recent credit reports. After completing a security clearance application in 2010, she was well aware that her debts were security-relevant. She did take some steps to resolve her debts by contacting several creditors in November 2010. But she failed to provide documentation related to most of the payment plans she described. In April 2011, she filed a bankruptcy petition. Applicant's recent bankruptcy petition does not outweigh her inaction over the past several years.

Applicant used an illegal drug for approximately four decades. Her long history and recent use of marijuana present a serious security concern. She was using marijuana last year, in 2010, at the age of 56, about the time of her security interview. She told the interviewer that she would not use it in the future. Her admitted use after that interview is especially troubling: She was on notice that illegal drug use was an issue for security clearance holders because she had completed a security clearance application in March 2010 that asked about illegal drug use; and she had met with an investigator in April 2010, who specifically asked her about her illegal drug use. Yet after this interview, Applicant used marijuana. She placed her own desires above those of the Government. Applicant's actions fail to demonstrate the good judgment and trustworthiness required of those who are granted access to classified information.

Overall, the record evidence fails to satisfy the doubts raised about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from the cited adjudicative guideline.

### **Formal Findings**

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.i	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraph 2.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 allow Applicant access to classified information. Applicant's request for a security clearance is denied.

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RITA C. O'BRIEN  
Administrative Judge