



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



In the matter of:)	
)	
)	ISCR Case No. 11-00720
)	
Applicant for Security Clearance)	

Appearances

For Government: Gregg A. Cervi, Esquire, Department Counsel
For Applicant: *Pro se*

February 16, 2012

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is granted.

Statement of the Case

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP) on August 17, 2010. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on June 15, 2011, detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct, that provided the basis for its preliminary decision to deny her a security clearance. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant received the SOR on June 27, 2011. She answered the SOR on August 22, 2011. Applicant requested a hearing before an administrative judge. DOHA received the request, and Department Counsel was prepared to proceed on October 26, 2011. I received the case assignment on November 1, 2011. DOHA issued a Notice of Hearing on November 17, 2011, and I convened the hearing as scheduled on December 6, 2011. The Government offered exhibits marked as GE 1 through GE 8, which were received and admitted into evidence without objection. Applicant testified. She submitted exhibits marked as AE A and AE B, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on December 13, 2011. I held the record open until January 15, 2012, for Applicant to submit additional matters. Applicant timely submitted AE D through AE R, which were marked and admitted without objection. The record closed on January 15, 2012.

Procedural and Evidentiary Rulings

Notice

Applicant received the hearing notice less than 15 days before the hearing. I advised Applicant of her right under ¶ E3.1.8 of the Directive to receive the notice 15 days before the hearing. Applicant affirmatively waived her right to the 15-day notice. (Tr. 8)

Findings of Fact

In her answer, Applicant admitted the factual allegations in the SOR with explanation. Her admissions are incorporated herein as findings of fact. She also provided additional information to support her request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 33 years old, works as an engineer for a Department of Defense contractor. She began her employment in November 2000 and has worked continuously with this employer since then.¹

Applicant graduated from college in 2000 with a Bachelor of Science degree in applied math and a minor in physics. She separated from and began difficult divorce proceedings against her first husband in late 2006. Her mother died unexpectedly in December 2006.² In their wills, her parents had set up a family trust for their property.

¹GE 1; Tr. 16.

²Applicant received approximately \$46,000 in late 2009 or early 2010 from her mother's estate. She used this money to pay other bills and to buy tools for her husband's business. Tr. 37-38, 40.

After her mother's death, her father administered the family trust. She married three years ago, and she has a two-year-old daughter.³

Applicant's employer detailed her to work in another state in 2008, where her father lived. Her father suggested that Applicant and he purchase a condominium. He found a property, which they purchased for \$712,000 in January 2008. She and her father signed the \$560,000 first mortgage. Only her father signed the second mortgage on the property. Applicant moved into the property, where she lived for one year. She understood that she would pay her father her portion of the mortgage. The remainder of the mortgage would be paid equally by her father and the family trust. She also paid the monthly condominium fee when she lived in the condominium. In 2009, she returned to her home state, and her father moved into the condominium with his girlfriend. Since he now resided in the condominium, he agreed to pay the condominium fees and the mortgage.⁴

Applicant learned in March 2009 that her father did not have any money to pay his living expenses or other expenses. She attempted to make partial payments on the mortgage, but the mortgage lender refused her offer. In July 2009, Applicant's father contacted the realtor who helped him purchase the condominium and inquired about listing the property for sale. The realtor did not hear from Applicant's father for two months; then he called and asked the realtor to bring a sales contract. When she arrived at the condominium, Applicant's father told the realtor that he had not paid the mortgage or condominium fees. She advised him to list the condominium as a short sale. She made the initial calls to the bank to advise about the short sale. A short while later, Applicant's father called the realtor and withdrew his authorization to sell the property on the advice of his attorney. In October 2009, Applicant called the realtor and asked her to check on her father because he was depressed. The realtor found Applicant's father unwashed, listless, and depressed. He had decided to live in the condominium and not pay the condominium fees or the mortgages. Upon learning of her father's condition, Applicant contacted his sister, her aunt. The sister packed some of her father's belongings and moved him to another state to live with his mother.⁵

On November 17, 2009, Applicant signed a sales agreement with a short-sale addendum. She initially listed the property for \$650,000, an amount she believed would pay the mortgages and past-due condominium fees.⁶ Because the housing market had declined, she did not receive any offers on the property at this price. Over the next

³GE 1; Tr. 16, 17, 23.

⁴Attachments to Response to SOR; Tr. 18, 22-23, 36-37.

⁵Response to SOR and Attachments; Tr. 43. In December 2009, Applicant and her husband returned from their residence in another state, packed her father's belongings, and placed them in storage. Response to SOR and attachments.

⁶The condominium association filed a lien against Applicant's property for the unpaid condominium fees. In a sale, title to the property would not transfer unless the lien was paid. Response to SOR attachment.

months, the price of the property decreased, and the mortgage lender began foreclosure proceedings on the property. A few days before the foreclosure sale, Applicant received a \$380,000 offer to purchase the property. The mortgage lender declined the offer, and foreclosed on the property on June 8, 2010. The mortgage lender sold the property at auction on August 30, 2010. In July 2011, the property resold for \$499,950. At the hearing, Applicant stated that she had not received any information about a deficiency balance. Likewise, neither her father nor her attorney heard from the mortgage lender about a deficiency balance. The August 28, 2010 credit report indicated that the mortgage lender reclaimed the collateral (property) to settle a defaulted mortgage and showed a zero balance. The March 9, 2011 credit report reflects a zero balance on the mortgage debt. After the hearing, Applicant contacted the mortgage lender, who advised her that since the credit report showed zero, there is no deficiency.⁷

In December 2009, the condominium association filed a lawsuit against Applicant and her father for payment of the past-due condominium fees on this property. The condominium obtained a judgment against Applicant and her father in the amount of \$10,600 plus interest. Through her attorney, Applicant reached an agreement to pay this judgment for \$12,000. Applicant believed her father should pay the judgment because he created the problem with the property. Her father agreed to pay the judgment and did. A line of satisfaction (notice of payment) has been filed with the court. The condominium association filed a second lawsuit against Applicant and her father for past-due fees in August 2010. The court dismissed this case in November 2011.⁸

When she met with the Office of Personnel Management (OPM) investigator in September 2010, Applicant advised that after receiving an extension to file late she filed her 2007 and 2008 tax returns late because of problems with obtaining necessary tax information from her first husband. She told the OPM investigator that she had an extension to file her 2009 tax returns, because of problems with completing the return. At the hearing, Applicant stated that her 2009 and 2010 tax returns had not been filed by her accountant. She understood that she had an extension of time for filing these returns. She provided proof of the extensions of time and of filing her 2009 and 2010 tax returns after the hearing. Her taxes are not an issue in this case. Her finances are solid. She lives within her income and pays her monthly bills.⁹

Applicant smoked marijuana once as a high school sophomore. In her junior year of high school, she smoked marijuana every weekend with her friends. She also purchased marijuana during this time. In her senior year of high school, her marijuana use declined to once a month. When she started college in 1996, she used marijuana three to five times a week during her first semester of college. She also purchased

⁷Response to SOR; GE 3; GE 7; GE 8; AE A; AE O; AE R; Tr. 20-23, 36, 41-43.

⁸GE 4; GE 5; AE B; AE P; AE Q; Tr. 33-34.

⁹GE 2; AE G-AE N; Tr. 45-46.

marijuana in the fall of 1996. She did not smoke any marijuana during the spring semester. She estimates that between June 1997 and October or November 1999, she used marijuana four to six times a year. She used marijuana once in August 2000. When Applicant returned to her parents' home for her mother's funeral in February 2007, she attended a party at a friend's house, where she smoked a marijuana cigarette with others. She did not think about Department of Defense policy, her company's drug policy, or her security clearance. She did not know the people at the party and does not have any contact with them. She has not used marijuana since the party.¹⁰

During her first semester of college in 1996, Applicant tried cocaine and LSD once. She did not like the effects of LSD and has not used it since. She felt no effects from the cocaine. In 1998, she again tried cocaine, without any effect. She decided not to use cocaine again and has not. She has never been arrested.¹¹

Applicant applied for a special program security clearance in 2000 after being hired by her employer. She acknowledged her extensive marijuana use in college on this application. Her request for a clearance was denied. While she was never told the reason for the denial of her security clearance application, she believed it was because of her marijuana use in college. She applied for a different type of clearance in 2004 and was granted a clearance in 2005.¹²

Applicant took a pre-employment drug test in 2000 and passed. She has not taken another drug test. Her employer has a drug policy, but she is not sure if the policy is a zero tolerance policy. She acknowledged her 2007 use of marijuana on her security application.¹³

Applicant submitted two letters of recommendation from supervisors, past and present. Both describe her as hard working, dedicated, reliable, and dependable. They view her as highly capable and one of their best engineers. Both are aware of the problems with the condominium and her father. They strongly recommend her for a security clearance.¹⁴

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially

¹⁰GE 2; GE 3; Tr. 23-33.

¹¹*Id.*

¹²Tr. 23-32.

¹³GE 1; Tr. 30-32.

¹⁴AE D; AE E.

disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, 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. 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, 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. . . ." An applicant has the ultimate burden of persuasion for 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 an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

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.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

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

Appellant developed significant financial problems after she and her father purchased a condominium, and her father then failed to pay the mortgage and condominium fees. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through 20(f), and the following are potentially applicable:

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

In assessing whether an Applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." See, e.g., ISCR Case

No. 05-01920 at 5 (App. Bd. Mar. 1, 200). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has “. . . established a plan to resolve his financial problems and taken significant actions to implement that plan.” See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Except for the real estate property purchased with her father in 2007, Applicant has paid her bills and managed her income. When her employer transferred her to a state where her father lived, her father discussed purchasing a condominium together as an investment. After considering his proposal, the sources of money to pay the mortgage for the condominium, and calculating the cost, Applicant agreed to her father’s suggestion. They purchased a condominium, and Applicant moved into the unit in January 2008. She paid the condo fees and her share of the mortgage during the year she lived in the unit. Her father then decided to move into the condominium and assumed responsibility for all the costs of the unit. Within two months, Applicant learned that her father had no money remaining in the trust fund and could not pay the expenses of the condominium. Eventually, she realized the depth of the problems created by her father. She attempted to pay part of the mortgage, but her offer was rejected. Her father took some preliminary steps to sell the unit, but then stopped. By October 2009, she learned that her father was severely depressed. She enlisted the aid of his sister to move him to live with his mother; then, she signed a sales contract on the condominium unit. The mortgage lender declined to accept the short-sale offer she received on the condominium unit and foreclosed on the property. AG ¶ 20(a) applies because there is little likelihood Applicant will invest in property with her father in the future. AG ¶ 20(b) applies because Applicant had no control over her father’s conduct or his depression, which resulted in the loss of the condominium to foreclosure. She took action to resolve the financial issues once she learned about the problem. She acted responsibly under the circumstances.

Applicant manages her finances and lives within her financial means; thus, she does not need financial counseling. She does not owe any additional money on the condominium mortgage and has resolved the judgment entered against her. Through

her attorney, she negotiated, in good faith, a settlement of the only judgment entered against her in court, and her father paid the money owed. The court dismissed the second civil action against her. AG ¶¶ 20(c) and 20(d) apply. Applicant has mitigated the security concerns about her finances.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to 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 ¶ 16 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; and,

(g) association with persons involved in criminal activity.

In early 2007, Applicant smoked a marijuana cigarette with others at a party. She held a security clearance at the time. Her action raises a question about her judgment, trustworthiness, and failure to comply with the rules about illegal drug use. Because marijuana is illegal, she associated with individuals involved in an illegal activity, marijuana use. Disqualifying conditions raised in AG ¶¶ 16(c) and 16(g) apply.

AG ¶ 17 describes the conditions which could mitigate the security concerns of the Government. I have considered all the conditions, and the following are potentially applicable:

(c) 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;

(d) 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 recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and,

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant smoked marijuana extensively in her junior year of high school and in her first semester of college. Starting in 1997, she reduced her use of marijuana over the next two years. Since the fall of 1999, she has used marijuana twice, with her last use five years ago. More than 12 years has passed since she regularly smoked marijuana in college. Marijuana is not a part of her life. Once she started working in the business world, she changed her lifestyle to one that did not include drug use of any type. With one exception, she continues to follow a lifestyle which does not include marijuana use. Her primary focus is her young child, her husband, and her career, not drug use.

During a low point in her life, she accepted a marijuana cigarette at a party without thinking about the consequences to her clearance or her job. She did not consider her work or Department of Defense policies about smoking marijuana at the party. She has not seen the friend who took her to this party five years ago, and she does not associate with individuals involved in criminal activity. The Government knows about her 2007 drug use because she voluntarily provided this information on her SF-86. She did not hide this information, which indicates her honesty. She follows the rules at work and of society. The situation in which she found herself in 2007 is not likely to reoccur in the future because her life is much different now. Her forthright testimony about her impulse to use marijuana at the party in 2007 and her honesty in providing this information to the Government weighs heavily in her favor. She understands the problems she created for herself by her poor judgment in 2007. The evidence does not reflect an intent to use illegal drugs of any type in the future. There is little likelihood that she can be pressured or coerced for her past drug use, given the length of time and the changes in her life. She has mitigated the Government's security concerns under Guideline E.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. As a high school student and a college freshman, Applicant smoked marijuana extensively and experimented with cocaine and LSD. After her first semester in college, she recognized the effect her marijuana use was having on her and reduced her frequency of smoking it. For two years, she smoked marijuana intermittently, then she stopped. Since 1999, she smoked marijuana twice, once in 2000 and once in 2007. Her impulsive decision to smoke marijuana in 2007 while holding a security clearance showed poor judgment and betrayed the Government's trust. She acknowledged her conduct on her SF-86, which indicates her honesty, and she accepted responsibility for her poor judgment. Her life is completely different now. Her family and her career are paramount, and illegal drugs have no place in her life. She complies with her workplace rules. In reviewing all the evidence of record and the circumstances of early 2007, there is almost no likelihood she will ever smoke marijuana again because her life has changed and her friends have changed. She does not and has not regularly involved herself with other illegal drugs; thus, there is no security concern that she will be involved with other illegal drugs or with marijuana. She could not be pressured or coerced to disclose classified information based on this one-time use because she has been honest about her conduct. She would report contacts for classified information to the proper officials.

Applicant's financial problems relate solely to the condominium she purchased with her father in 2007 and his failure to honor his part of their agreement to pay for the condominium. Applicant has no control over her father's conduct. She, however, assumed responsibility for solving the financial problems created by her father's

conduct. She tried to sell the condominium, but the mortgage lender rejected the offer she received on the condominium. She negotiated a payment of the judgment entered against her, and her father paid it as agreed. The judgment resulted from her father's conduct, not hers. She is recognized at work for her dedication, integrity and trustworthiness. She has an excellent performance record and is well respected by her managers. She is married and has a child. As a result, she focuses her attention on providing a stable domestic environment for her family. Most significantly, she has taken affirmative action to pay or resolve the delinquent debts that raised security concerns. (See AG ¶ 2(a)(6).) Of course, the issue is not simply whether all her debts are paid: it is whether her financial circumstances and personal conduct raise concerns about her fitness to hold a security clearance. Her past financial problems and one-time use of marijuana in 2007 do not raise security concerns . (See AG ¶ 2(a)(1).)

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her finances and personal conduct under Guidelines F and E.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 1.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARY E. HENRY
Administrative Judge