



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



In the matter of: )  
)  
) ISCR Case No. 11-00901  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Stephanie Hess, Esq., Department Counsel  
For Applicant: Marie Lott Pharaoh, Esq.

05/31/2013

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**Decision**

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O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guidelines for financial considerations and drug involvement. Her request for a security clearance is granted.

**Statement of the Case**

On March 12, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) citing security concerns under Guidelines F (financial considerations) and H (drug involvement) of the Adjudicative Guidelines (AG).<sup>1</sup> In her August 2, 2012 Answer to the SOR, Applicant admitted 5 of the 13 financial allegations, and admitted the single drug-related allegation. She also requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on April 12, 2013, and I convened the hearing as scheduled on May

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<sup>1</sup> Adjudication of the case is controlled by Executive Order 10865, as amended; DOD Directive 5220.6 (Directive), as amended; and the Adjudicative Guidelines, which supersede the guidelines listed in Enclosure 2 to the Directive. They apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

2, 2013. I admitted eight Government exhibits (GE 1 - 8), and three exhibits offered by the Applicant (AE A - C). DOHA received the transcript on May 8, 2013.

### **Findings of Fact**

Applicant's admissions 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 of fact.

Applicant is 44 years old. She married in 1987 and divorced in 1998. She became an enlisted member of the U.S. Army in 1986, and was honorably discharged in 1991. She served again in 1994, and was honorably discharged in 1997. She served as a combat signaler. She received her first security clearance while serving in the Army. She is a service-connected disabled veteran, and is currently supported by her \$1,500 monthly disability payments. From 1997 to 2002, she was a budget analyst for a communications company. Since then, she has worked for federal contractors in business management and contracting. Applicant was injured on the job in 2007. As a result, a portion of her medical bills were paid through worker's compensation insurance. Since that time, she has worked intermittently through contractors for federal agencies. She is awaiting results of her security clearance adjudication to begin her position with a defense contractor. (GE 1, 4; Tr. 28, 48, 54-57)

In December 2009, Applicant visited her 65-year-old mother in another state for the holidays, and accompanied her to a medical appointment. They were told that her mother was seriously ill. She was admitted to the hospital, and passed away a few days later. Applicant was shocked and depressed. She was with friends between December 2009 and January 2010 and shared a marijuana cigarette one or two times. She disclosed her drug use on her security clearance application, and during her security interview. At her interview, she mentioned additional stressful factors including her father's illness, her delinquencies, and her unemployment. Applicant had not used marijuana before that time, has not used it since, and has no intent to use it in the future. She has not been treated for drug abuse, and has no criminal record related to illegal drug use. She was not employed or holding a security clearance when she used marijuana. She stated in her interrogatory response that she has never tested positive on drug tests during the years she held a security clearance. (GE 1-4; Tr. 31-33, 57-62)

Applicant's intermittent employment and periods of unemployment led to financial problems, and she was in jeopardy of losing her home. She filed a Chapter 13 bankruptcy petition in July 2007, which enabled her to pay her creditors and save her home from foreclosure. She included all the debts that were delinquent at the time. The payment plan required her to pay \$205 per month toward her debts. She paid for a period of 60 months, although in 2009 and 2011, she was unable to meet the payments because of her lack of employment. Applicant made up the payments, and the defaults were remedied by the trustee. She successfully completed the plan, and it was discharged in December 2012. As part of the bankruptcy process, Applicant

attended a one-day financial counseling course, and also completed an online course. (GE 3, 8; AE A-C, Tr. 37-39)

The SOR lists 12 debts. Unless otherwise noted, these debts appear in Applicant's credit reports of March and September 2011, March 2012, and April 2013. (GE 5 – 7; AE C)

**Allegations 1.b, 1.c – Automobile loan.** These two debts (\$15,285 and \$16,438) are owed to the same creditor and reflect judgments filed on the same date. Applicant testified that they are duplicates of the same debt, which stems from a deficiency balance on her car that was voluntarily repossessed in January 2007. The creditor filed suit. The debt was included in her Chapter 13 bankruptcy petition. Applicant was not represented by counsel in her bankruptcy and was unaware that she could have the judgment removed from her current credit report. She has since consulted with an attorney to remove it from her credit report. (AE B; Tr. 36, 42-45, 52)

**Allegations 1.d, 1.e – Medical debts.** Applicant sought payment of medical debts related to her injury through workman's compensation insurance. Following a hearing, the court ordered one SOR debt (allegation 1.d: \$2,975) to be paid through workman's compensation. Applicant estimated it was paid in 2009, and it does not appear in her 2013 credit report. The other medical debt (\$1,187) occurred after Applicant's bankruptcy was filed. She did not have the funds to pay it, and it appears as a collection account in her 2013 credit report. (GE 3, 5; AE C, Tr. 40-42, 47, 52-54)

**Allegation 1.f – Mortgage.** Applicant filed her bankruptcy in part to save her home from foreclosure. The loan is included in her bankruptcy petition. The lender cited in the SOR sold the loan to another lender. The mortgage is listed in Applicant's 2013 credit report as discharged through bankruptcy. Applicant is now making her payments through the successor lender. She applied for a loan modification and was recently approved. Starting in May 2013, her monthly payment was reduced from \$1,046 to \$748. (GE 8; AE C; Tr. 54-55, 63)

**Allegations 1.g, 1.h, 1.i – Cable accounts.** These debts (\$162, \$127, and \$105, respectively) relate to accounts with the same cable company. In her Answer, Applicant stated she has not had accounts with this company since before she filed the Chapter 13 bankruptcy petition in 2007, and that they were included in her bankruptcy. Applicant's 2013 credit report lists two accounts with this creditor. Both were discharged through her bankruptcy and show a zero balance. (GE 3; AE C)

**Allegation 1.j – Rent.** Applicant's landlord filed a judgment against her in 2002 for \$772. In her Answer, Applicant stated she paid this debt before she purchased her home in October 2002, because it was a "requirement of my loan." The investigator did not raise this debt at her security interview, and it does not appear in her 2011, 2012, or 2013 credit reports. (GE 3; AE C)

**Allegation 1.k – Cable account.** Applicant opened this account in 2009. In her Answer, she stated the charge is for cable equipment. However, she disputed the \$530 charge with the credit agency because she returned the equipment to the company, as required. Her dispute appears in her 2013 credit report, which lists the account as paid. (Answer; AE C)

**Allegation 1.l – Parking fine, \$205.** The original creditor is a city government. In her Answer, Applicant admitted this debt, which she ascribed to parking tickets, and stated that she intends to pay the debt. However, at the hearing, Applicant confused this debt with the cable debts listed at allegations 1.g, 1.h, and 1.i. It appears that the parking ticket remains unpaid. (Answer; Tr. 46)

**Allegation 1.m – Retail account, \$7,852.** Applicant co-signed on a joint account with a friend in 2001. When the friend died, Applicant became liable for the balance. She could not maintain the payments, and included the account when she filed her Chapter 13 bankruptcy. The original creditor appears in Schedule F of Applicant’s petition, as well as the successor creditor. The account does not appear in her 2011, 2012, or 2013 credit reports. (GE 3, 8)

## **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 AG.<sup>2</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 when 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 adjudicative factors addressed under Guideline H (drug involvement) and Guideline F (financial considerations).

A security clearance decision is intended only to resolve the questions of whether it is clearly consistent with the national interest<sup>3</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

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<sup>2</sup> Directive. 6.3.

<sup>3</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

its burden, it then falls to the 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>4</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 interest as her 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>5</sup>

## Analysis

### Guideline H, Drug Involvement

AG ¶ 24 expresses the security concern pertaining to drug involvement:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

Of the eight disqualifying conditions listed at AG ¶ 25, the following applies:

(a) any drug abuse.<sup>6</sup>

Between December 2009 and January 2010, Applicant illegally used marijuana once or twice. She used it with friends, who offered to share a marijuana cigarette with her. AG ¶ 25(a) applies.

Two of the four mitigating conditions under AG ¶ 26 are relevant:

(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:

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<sup>4</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>5</sup> See *Egan*; Administrative Guidelines, ¶ 2(b).

<sup>6</sup> Adjudicative Guidelines, Guideline H, ¶ 24(b): Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

- (1) disassociation from drug-using associates and contacts;
- (2) changing or avoiding the environment where drugs were used;
- (3) an appropriate period of abstinence;
- (4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant's use of illegal drugs is not recent, as it occurred more than three years ago. She used it with friends during an unusual occurrence—her mother's unexpected death—and has not used it since. She did not possess, purchase, or distribute marijuana or any other illegal drug. Her isolated instance of bad judgment during a trying period in her life does not undermine the reliability she has shown, for instance, in bringing her Chapter 13 payment plan to a successful conclusion by making payments over a period of five years. I conclude that Applicant's use of marijuana was an anomaly. Moreover, Applicant has demonstrated her intent to avoid illegal drug use in the future by abstaining from marijuana use for more than three years. AG ¶ 26(a) and ¶ 26(b)(3) apply.

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

AG ¶18 expresses the security concern pertaining to 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. . .

Applicant was unemployed or employed sporadically after 2007. She was unable to meet her financial obligations, and her debts became delinquent. AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and ¶ 19(c) (*a history of not meeting financial obligations*) apply. The record contains no evidence of other disqualifying conditions such as frivolous spending, or debts related to alcoholism, gambling, or deceptive practices.

I have considered the mitigating factors under AG ¶ 20 of the Financial Considerations guideline, and the following potentially apply:

- (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; and

(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.

Applicant's unexpected job injury in 2007 persistently affected her ability to obtain continuous, stable employment and negatively influenced her finances over the past several years. Her most consistent source of income is the \$1,500 per month that she receives as a disabled veteran. Applicant acted responsibly when she was unable to keep up with her bills. She filed for Chapter 13 bankruptcy protection, which enabled her to repay her creditors and protect her home from foreclosure. Applicant has also acted responsibly by applying for a loan modification. With the application approved, she has reduced her mortgage payment by \$300 per month. AG ¶ 20(b) applies.

Applicant has been working steadily to resolve her financial situation for the past five years. As part of the bankruptcy process, she received financial counseling. She provided evidence that she has been paying \$205 per month since 2007. Although she twice was unable to meet the payments, she persevered, the interruptions were remedied, and she has now completed the plan. The bulk of Applicant's debts have been resolved with her successful discharge in December 2012. Of the remaining debts, two were paid outside of the bankruptcy in 2002 and 2009, and one was successfully disputed. Two debts remain unpaid, which total approximately \$1,300. Given her persistence in completing the five-year bankruptcy plan, I conclude she will resolve the two debts. AG ¶ 20(c) applies.

### **Whole-Person Analysis**

Under the whole-person concept, an administrative judge must evaluate the applicant's security eligibility by considering the totality of an applicant's conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

AG ¶ 2(c) requires an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept. Under the cited guidelines, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant's brief use of marijuana occurred approximately three and one half years ago. It occurred at a time when she was shocked and depressed because of devastating news about her mother's health, and after she had seen her mother die unexpectedly. She made an error in judgment, in response to an unusual circumstance that is unlikely to recur. Applicant has demonstrated positive behaviors, including her abstinence from marijuana use for more than three years, and her resolution of her debts through five years of payments on her Chapter 13 plan. She is a disabled veteran who served honorably in the military for eight years.

A fair and commonsense assessment of the available information shows Applicant has satisfied the doubts raised about her suitability for a security clearance. For these reasons, I conclude she has mitigated the security concerns arising from the cited adjudicative guidelines.

### **Formal Findings**

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

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|---------------------------|---------------|
| Paragraph 1, Guideline F: | FOR APPLICANT |
| Subparagraphs 1.a – 1.m   | For Applicant |
| Paragraph 2, Guideline H: | FOR APPLICANT |
| Subparagraph 2.a:         | For Applicant |

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is granted.

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RITA C. O'BRIEN  
Administrative Judge