



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-08341
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: *Pro se*

04/01/2013

**Decision**

LYNCH, Noreen A, Administrative Judge:

On August 15, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline H (Drug Involvement), and Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on November 29, 2012, and postponed for good cause. A notice of hearing was issued on January 18, 2013, scheduling the hearing for March 5, 2013. Government Exhibits (GX) 1-6 were admitted into evidence, without objection. Applicant testified, presented the testimony of one witness, and submitted Applicant Exhibits (AX) A-C, which were admitted without objection. I received the transcript on March 14, 2013. Based on a review of the pleadings, testimony, submissions, and exhibits, I find Applicant met her burden regarding the security concerns raised. Security clearance is granted.

## **Findings of Fact**

In her answer to the SOR, Applicant admitted the factual allegations under Guideline F (Financial Considerations) and Guideline H (Drug Involvement).

Applicant is a 32-year-old senior military science instructor for a defense contractor. She graduated from high school, and received her undergraduate degree in May 2003. She is currently working on a graduate degree. From 1996 until 2001, Applicant served in the U.S. Marine Corps. Applicant served in the U.S. Army on active duty from 2003 until 2009. (Tr. 45) Since 2010, she has served in the Army Reserves. Applicant is married and has two young children. She has worked for her current employer since February 2011. (GX 1) She has held a security clearance since 2001.

### **Drug Involvement**

Applicant and her husband attended an out-of-state holiday party in late November 2011 with college friends whom she had not seen in almost seven years. On December 3, 2011, Applicant tested positive for THC. She ingested marijuana unknowingly at the holiday party. She and her husband had a late-night snack of brownies. They went to bed immediately after. She did not notice any effects as she was asleep. She was credible in her statement that she has never used marijuana or any other illegal drug. She has been subject to monthly random drug test while in the military and by her current employer. She has never tested positive. Applicant was not given a copy of the December 3, 2011 test result. She has since been tested on a random basis. She does not knowingly associate with drug users. She submitted negative test results from March 2012. (GX 2)

### **Financial**

Applicant was deployed to Iraq for twelve months in September 2004. Her husband, who was in the military also, was deployed to Afghanistan at about the same time for twelve months. In late 2005, when they returned to the United States they purchased their first home. They believed this would be the duty station for at least three to five years. (Tr. 16) Approximately one year later, Applicant received orders unexpectedly to make a permanent change of station (PCS) across country. Applicant's home was put under contract and the potential new owner agreed to move in the home and pay the mortgage while waiting for the house to sell. However, the buyer decided not to buy the home. Applicant's home was listed with a realtor for approximately five months, but it did not sell. After that point, Applicant obtained a renter via a rental agency. This happened in 2007 when the real estate market was down. The property was listed with a realtor and Applicant continued to pay the mortgage after her move. An offer of short sale was not accepted by the bank. The house went to foreclosure in November 2010.

Applicant and her husband purchased an affordable home in their new duty location. Applicant became pregnant shortly after and decided to resign from the Army. Her active duty service obligation had been met years earlier. She did not want to be on

active duty with possible deployments after just giving birth to a young child. Applicant learned that her resignation package was denied because she gave birth and was no longer pregnant. She was ordered to be ready to deploy to Iraq in 30 days. Applicant had several more mandated PCS moves and had her second child. She could no longer support her family with the deployable high operational tempo of the Army. In 2010, she transferred to the Army Reserves.

Applicant's husband was completing his last semester in an undergraduate program when Applicant decided to take a year away from the military and stay at home with her children. He stopped attending school and looked for employment. (Tr. 63) Applicant's husband opened a small retail business in 2008. He received some monetary assistance from his family. However, due to the volatile economic times, the business faltered and ultimately failed in 2010. They were forced to move from their home and find employment in another state. They could not sell the home. The mortgage on the second home went to foreclosure in September 2010.<sup>1</sup>

The SOR alleges debts in excess of \$16,000. Applicant defaulted on two home mortgages totaling approximately \$366,000. Applicant admits the debts and they are confirmed on her credit reports. (GX 4-5) Applicant received an Internal Revenue Service (IRS) Form 1099-C, cancellation of debt, as well as a 1099-A, acquisition of property from the mortgage lender. (GX 2)<sup>2</sup>

Applicant's financial difficulties began in 2010 when their small business failed. Applicant was forced to stop making payments on all credit cards and mortgages in 2010. The housing market crashed and Applicant could not continue to keep paying the mortgage on two homes. Until that time, they had paid their bills and the mortgages on the two homes. (Tr. 22)

Applicant and her husband initiated a Chapter 7 bankruptcy in February 2011. She qualified for the Chapter 7 bankruptcy proceeding, meeting debt and income eligibility requirements of the state. The filing has been delayed due to documentation needed from a tax loss from the husband's business. His parent's filed bankruptcy based on the failed business. They are filing amended returns. Both federal and state tax returns have been received and they are proceeding with the Chapter 7 bankruptcy. All the debts listed in the SOR will be discharged. (AX A) The process should be completed in six to eight weeks.

Applicant's performance evaluations consistently rate her as a superb performer who continued to excel in positions of higher responsibility. She is recommended for a promotion to Major. (AX C) Applicant was rated among the top 20 percent of officers in her battalion in 2006. She learns quickly and executes her duties in an outstanding manner.

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<sup>1</sup>The 1099-A is for the mortgage on the second home. This will be included in the bankruptcy petition.

<sup>2</sup>The 1099-C is for the mortgage on Applicant's first home. The debt is now cancelled.

Applicant submitted three letters of recommendation, including one from her commanding officer. He describes Applicant as solid and trustworthy. Her judgment and insight have served her well as an ROTC Recruiting Operations Officer. She is self-motivated, grounded and goal oriented. Applicant has gained the respect of her peers. (AX F, AX H) Applicant is consistently described as a smart woman who has a strong work ethic and dedication to her job and to her fellow employees. She responds to situations in a dignified manner. She does not have difficulty adapting to situations and has proven to be highly proficient in overcoming obstacles. She is a valued member of the team.

Applicant earned the coveted German Efficiency Badge (Gold), and was awarded the Combat Action Badge while deployed to Mosul with the Infantry Division. She has contributed greatly to training quality junior officers. She is the penathlete of an officer. Applicant is a decorated Captain in the U.S. Army; a combat veteran; an accomplished athlete; a gifted and talented manager, organizer, leader, and mother of two children. (AX C)

Applicant and her husband were responsible in their financial affairs. When he lost his job in August 2012, he could not find full-time employment. Applicant responded to DOHA interrogatories in 2012. Regarding her financial situation, Applicant's husband has been unemployed or underemployed since 2012. He is now building an insurance agency, and completing his undergraduate degree. (Tr. 25)

Applicant has a budget. (AX C) Applicant's monthly net income is \$5,850. After expenses, her net remainder is small. She has a small savings account and a 401(k) account. They are current on all daily expenses and their car payment. Applicant has not acquired any new debts. Thus, she has shown that even in difficult times, she has the ability to save and pay bills.

### **Policies**

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The United States Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”<sup>3</sup> The burden of proof is something less than a preponderance of evidence.<sup>4</sup> The ultimate burden of persuasion is on the applicant.<sup>5</sup>

A person seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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.”<sup>6</sup> “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>7</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.<sup>8</sup> The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

## **Analysis**

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

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

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<sup>3</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

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

<sup>5</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>6</sup> See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

<sup>7</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>8</sup> *Id.*

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.

(a) Drugs are defined as mood and behavior altering substances, and include:

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and

(2) inhalants and other similar substances;

(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.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying:

(a) any drug abuse (see above definition);

(b) testing positive for illegal drug use;

(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;

(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence;

(e) evaluation of drug abuse or drug dependence by a licensed clinical social worker who, is a staff member of a recognized drug treatment program;

(f) failure to successfully complete a drug treatment program prescribed by a duly qualified medical professional;

(g) any illegal drug use after being granted a security clearance; and,

(h) expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use.

Applicant tested positive for her THC (marijuana) on December 3, 2011, while holding a security clearance. AG¶ 25(a), 25(b) and 25(g) apply.

AG ¶ 26 provides conditions that could mitigate security concerns:

(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;

(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 positive test in December 2011 was the result of an unknowing ingestion of a brownie laced with marijuana at a holiday party. Applicant has never knowingly used any illegal drugs. She has been subject to random drug tests during her military career and in her civilian employment. She has no intention of using any illegal drugs. She tested negative for test results performed in March 2012. AG ¶ 26(a) and 26(b) apply.

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

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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." It also states that "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant admitted that she had delinquent debts from 2010 and two home mortgages that defaulted. Consequently, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against her and mitigate security concerns.

Applicant and her husband returned to the United States after deployments to Iraq and Afghanistan in late 2005. They decided to purchase a home because they were under the belief that they would remain at that duty station for almost five years. Applicant had to PCS only nine months after purchasing a home. She and her husband tried to sell the home and also to rent it. They paid on the mortgage for as long as they could. This sequence of events which started in 2007, included more PCS moves, a

failing housing market, unemployment for both Applicant and her husband, and a failed business. These events were beyond their control and resulted in the defaulting of the two mortgages and credit card debt. Consequently, Financial Considerations Mitigating Condition (FCMC) 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) applies in part.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) applies. As noted, Applicant is now employed with a defense contractor and is not on active duty military. She and her husband did everything to avoid a financial disaster. They tried to sell their homes, relocate, find new employment and start a business. Applicant is the sole income provider. She is current with daily expenses. There is evidence that she acted reasonably under the circumstances. She has submitted documentation to show that she has resolved or is resolving her delinquent debts through the Chapter 7 bankruptcy. She receives credit under this mitigating condition.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant paid her bills and mortgages until the business collapsed in 2010. She did not incur new debts. She has not yet completed the financial counseling under the bankruptcy which obviates the applicability of FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control). Applicant does not receive full mitigation under AG ¶ 20(d).

### **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 the 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 32 years old. She served on active duty in the United States Marine Corps and the United States Army. She is currently in the Army Reserves. She has letters of recommendation from employers and colleagues. She has served in Iraq. Applicant is married and has two children. She has provided for her family. Her husband also served in the military and was deployed. He has been unemployed or underemployed. He is starting an insurance company to provide more income for the family and is completing his undergraduate degree.

Applicant documented the series of events that transpired when she and her husband returned from deployments in late 2005. They were under the belief that buying a home in 2006 was a wise investment. The Applicant did not believe she would have to PCS for three to five years. However, the situation changed. She tried everything to sell her home and to pay the mortgage for as long as she could. She and her husband purchased a second home when they relocated. Unfortunately, the real estate market was not good and economic times did not improve. They held on for as long as they could and paid their bills. Unfortunately, their homes went to foreclosure. Applicant has a 1099-C to show that she has no debt from the one mortgage. The other mortgage, if not forgiven, is included in the Chapter 7 bankruptcy. She is fully employed and her husband is starting an insurance business. She acted as responsibly as she could under the circumstances.

Applicant tested positive for marijuana in December 2011. She has served in the military for many years and has never been involved with drugs. She has been employed and has submitted to drug tests. She has tested negative on all of them. She was credible in that she did not knowingly use marijuana in late November 2011. She presented herself in an organized, coherent fashion at the hearing.

Applicant submitted sufficient evidence to mitigate the security concerns raised in his case. I have no doubts about her trustworthiness or judgment given the record. Accordingly, Applicant has mitigated the security concerns. Clearance is granted.

### **Formal Findings**

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

Paragraph 1, Guideline H:	FOR APPLICANT
Subparagraphs 1.a:	For Applicant
Paragraph 2, Guideline F:	FOR APPLICANT

Subparagraphs 2.a -2.c:  
Subparagraphs 2.d-2.e:

For Applicant  
Against 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 a security clearance. Clearance is granted.

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NOREEN A. LYNCH.  
Administrative Judge