



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



In the matter of:	)	
	)	
[Redacted] <sup>1</sup>	)	ISCR Case No. 15-02480
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Rhett E. Petcher, Esq., Department Counsel  
For Applicant: *Pro se*

09/19/2016

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**Decision**

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FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and H (Drug Involvement). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on August 5, 2014. On January 26, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guidelines F and H. The DOD CAF acted under Executive Order (Exec. Or.) 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 by the DOD on September 1, 2006. The adjudicative guidelines are

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<sup>1</sup> On my own motion, I have corrected the Statement of Reasons to reflect the spelling of Applicant's first name as it appears in her security clearance application and her answer to the SOR. The corrected spelling is used in the caption for this decision.

codified in 32 C.F.R. § 154, Appendix H (2006), and they replace the guidelines in Enclosure 2 to the Directive.

Applicant answered the SOR on March 8, 2016, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on April 14, 2016, and the case was assigned to me on May 2, 2016. On May 12, 2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for June 8, 2016. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or any documentary evidence. I kept the record open until July 11, 2016, to enable her to submit documentary evidence. She timely submitted Applicant's Exhibits (AX) A and B, which were admitted without objection. DOHA received the transcript (Tr.) on June 16, 2016.

### **Findings of Fact<sup>2</sup>**

In her answer to the SOR, Applicant did not expressly admit or deny SOR ¶¶ 1.a-1.d, and I have treated her answer to those allegations as denials. She admitted SOR ¶¶ 1.f and 2.a. She denied SOR ¶ 1.e and 2.b. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 29-year-old tools and parts attendant employed by a defense contractor since January 2014. She graduated from high school in June 2005 and served on active duty in the U.S. Navy from August 2005 to August 2011. She received an honorable discharge. She was discharged under a Navy "up-or-out" policy, because she had not been promoted to petty officer second class (pay grade E-5) by the time she completed six years of service. (Tr. 69.) She was unemployed from August 2011 to April 2012. She worked as an unarmed security officer from April 2012 to December 2013, when she was laid off. She was briefly unemployed until she was hired for her current job.

Applicant attended a community college from August 2011 to December 2015 and obtained a paralegal certificate. Her tuition was paid through the GI Bill, and she has no student loans or debts related to her education. (Tr. 28.)

Applicant married in December 2009 and separated in November 2012. She has two children, ages nine and five, who reside with her. (GX 2 at 7.) She testified that she left her husband because of his infidelity and financial irresponsibility. (Tr. 26-27.) Her husband has two children from other relationships, and his children live with their mothers. She has not tried to obtain child support from her husband. (Tr. 41-42.)

When Applicant submitted her SCA, she disclosed that she used marijuana about ten times between April 2004 and April 2013. She answered "no" to the question

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<sup>2</sup> Applicant's personal information is extracted from his security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to the record.

whether she used marijuana while holding a security clearance. (GX 1 at 34.) She testified that she smoked marijuana with a boyfriend in high school. She enlisted in the Navy shortly after graduating from high school and did not use marijuana during her military service. She used marijuana “maybe once or twice” after she was discharged from the Navy. (Tr. 23.) She last used marijuana at a birthday party for her cousin in April 2013, while employed as an unarmed security officer. (Tr. 33-35; GX 2 at 7-8.) She obtained the marijuana from the same boyfriend who gave her marijuana in high school. The boyfriend is the father of her nine-year-old son. She occasionally sees her old boyfriend when he visits his son, but she has no social contact with him. She believes her old boyfriend has stopped using marijuana, but she is not sure. (Tr. 67.) She testified that she does not intend to use marijuana again, because she is subject to random urinalysis and cannot afford to lose her job. (Tr. 24, 36.)

In her SCA, Applicant stated that she received a security clearance in November 2006. (GX 1 at 37.) The SOR alleges that she received her clearance in August 2005. The basis for the date alleged in the SOR is not reflected in the record.

Applicant testified that she thought her security clearance was terminated when she was discharged from the Navy. She was unemployed until she began working as an unarmed security officer, and this job did not require a clearance. (Tr. 30-31.)

The SOR alleges six delinquent debts totaling about \$12,500. The evidence concerning the debts is summarized below.

**SOR ¶¶ 1.a-1.c, medical debts for \$170, \$120, and \$120.** These debts were placed for collection in August and September 2012. (AX B at 2.) The \$170 debt was paid in February 2016. (Attachment to SOR Answer.) In May 2016, Applicant started making monthly \$50 payments to the collection agency for the two remaining debts and other medical debts not alleged in the SOR. (AX A; Tr. 23, 44-46.) She testified that the medical debts were incurred for medical treatment for her son when he suffered from seizures. (Tr. 44-45.)

**SOR ¶ 1.d, judgment for deficiency of \$3,458 after vehicle repossession.** This judgment was filed in January 2012 and is not satisfied. Applicant testified that she incurred this debt when she cosigned a loan to buy a vehicle for her husband. The lender garnished her pay after she was discharged from the Navy, and then obtained a judgment for the remaining indebtedness. During a personal subject interview (PSI) in October 2014, she told a security investigator that she intended to begin making payments on the debt within a few weeks. (GX 2 at 5.) At the hearing, she testified that she had not attempted to resolve the debt because she cannot afford it. (Tr. 51.)

**SOR ¶ 1.e, collection account for \$8,439.** This debt was referred for collection in July 2009. Applicant denied this debt in her PSI and her answer to the SOR. She testified that she was unable to identify the creditor by using Google, but she had not noticed that the contact information for the creditor was listed in the August 2014 credit bureau report (CBR). (GX 3 at 6.) After Department Counsel directed her attention to

the creditor's contact information, she promised to "look into it." (Tr. 52-53.) She did not submit any additional information by the time the record closed on July 11, 2016. The debt is not resolved.

**SOR ¶ 1.f, cellphone bill for \$198, referred for collection.** Applicant testified that this debt was incurred when she switched carriers. She was entitled to a rebate from the new carrier to pay off her old contract, but she did not submit the paperwork necessary to obtain the rebate. In her answer to the SOR, she stated that she forgot to send in the paperwork. At the hearing, she testified that she thought her husband submitted the paperwork. (Tr. 55-56.) As of the date the record closed, she had not submitted any evidence that the debt was resolved.

Applicant's net monthly income is about \$1,875. She estimates that her monthly expenses are about \$1,790, leaving a net monthly remainder of about \$85. (Tr. 59-64.) Her expenses include a \$390 monthly payment on a new car she purchased in 2014 after her old car began having electrical problems. (Tr. 62.) She uses a credit card to provide financial support to her mother, and she has a balance of about \$2,100 on the account, on which she makes the minimum payment. (Tr. 58.) She does not receive child support from either of the fathers of her two children. (Tr. 41.) At the time of the hearing, she estimated that she had \$50 in her checking account and \$200 in savings. (Tr. 64.)

### **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible

extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

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

The concern under this guideline 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.

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a

person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, her testimony at the hearing, and the CBRs submitted by both parties establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations"). The following mitigating conditions under this guideline are potentially applicable:

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;

AG ¶ 20(b): the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not fully established. Applicant has encountered several circumstances largely beyond her control: unemployment, marital separation, a financially irresponsible spouse, and unexpected medical expenses for her son. She has acted responsibly regarding her medical debts in SOR ¶¶ 1.a-1.c, but she has not moved beyond promises to pay the debts in SOR ¶¶ 1.d and 1.f. A promise to pay a delinquent debt in the future is not a substitute for a track record of paying debts in a timely manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sep. 19, 2008).

AG ¶ 20(c) is not established. Applicant has not sought financial counseling and her financial situation is not under control.

AG ¶ 20(d) is established for the medical debts in SOR ¶¶ 1.a-1.c, but not for the remaining debts.

AG ¶ 20(e) is not established. Applicant questioned the validity of the debt alleged in SOR ¶ 1.d, but she has not disputed it with the creditor, collection agency, or the credit bureau.

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

The SOR alleges that Applicant used marijuana, with varying frequency, from about April 2004 to April 2013 (SOR ¶ 2.a). It also alleges that her marijuana use occurred after she was granted a security clearance (SOR ¶ 2.b).

The concern under this guideline is set out in AG ¶ 24: “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.” Drugs are defined in AG ¶ 24(a)(1) as “[d]rugs, 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).”

Applicant's disclosures in her SCA, her admissions during his PSI, and her testimony at the hearing establish the following disqualifying conditions under this guideline:

AG ¶ 25(a): any drug abuse, defined in AG ¶ 24(b) as “the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction”; and

AG ¶ 25(c): illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and

AG ¶ 25(g): any illegal drug use after being granted a security clearance.

At the time Applicant illegally used marijuana, she had been discharged from the Navy, unemployed for about seven months, and then employed for about a year in a private-sector job that did not require a clearance. Under normal circumstances, her clearance would have become inactive. She incorrectly believed that she did not have a clearance. An “active” clearance makes the holder eligible for access to classified information. A “current” clearance is one in which a person has been determined eligible for access to classified information but is not currently eligible without a reinstatement. A former military member who held an active clearance has two years to remain in a “current” status before moving to an “expired” status. An “expired” clearance is one that

has not been used for more than two years, and it cannot be reinstated without a new investigation.<sup>3</sup>

The following mitigating conditions are potentially relevant:

AG ¶ 26(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

AG ¶ 26(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.

AG ¶ 26(a) is established. Applicant's use of marijuana was more than three years ago. She used it only once or twice. She did not believe she had a security clearance when she used it. She is now in a position where she needs a clearance and is subject to random urinalysis. She has decided that she cannot risk her job by smoking marijuana again.

AG ¶ 26(b) is not fully established. She sees her former boyfriend only when he visits his son. Her former boyfriend had stopped smoking marijuana. She has abstained for more than three years. However, she has not changed her environment and she has not submitted a signed statement of intent.

## **Whole-Person Concept**

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. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant 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

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<sup>3</sup> Information about "active," "current," and "expired" security clearances may be found at the following website: <http://www.veteranstoday.com/2007/06/17u-s-government-security-clearances-get-the-facts/>.



for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

I have incorporated my comments under Guidelines F and H in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant served honorably for six years in the U.S. Navy and held a security clearance during her military service. She was candid and sincere at the hearing. She is concerned about her ability to support her family and is not willing to jeopardize her job by smoking marijuana. On the other hand, she has made discretionary purchases such as a new car even though she is in financial distress. She has been on notice since she submitted her SCA that her delinquent debts raise security concerns, but she has been passive, careless, and inattentive regarding her financial affairs.

After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by her marijuana use, but she has not mitigated the security concerns raised by her delinquent debts. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a-1.c:	For Applicant
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Subparagraphs 1.d-1.f:	Against Applicant
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Paragraph 2, Guideline H (Drug Involvement): **FOR APPLICANT**

Subparagraphs 2.a and 2.b:	For Applicant
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### **Conclusion**

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman  
Administrative Judge