



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 24-01005

Appearances

For Government: Aubrey DeAngelis, Esq., Department Counsel

For Applicant: *Pro se*

02/18/2025

Decision

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant mitigated financial consideration concerns, but did not mitigate drug involvement concerns. Eligibility for access to classified information or to hold a sensitive position is denied.

Statement of the Case

On July 30, 2024, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Services (CAS) issued a statement of reasons (SOR) to Applicant detailing reasons why under the financial considerations and drug involvement and substance abuse guidelines the DCSA CAS could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); Department of Defense (DoD) Directive 5220.6 *Defense Industrial Personnel Security Clearance Review Program*, (January 2, 1992) (Directive); and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant responded to the SOR on September 6, 2024, and requested a hearing. This case was assigned to me on December 5, 2024. A hearing was scheduled for January 21, 2025, and was heard as scheduled. At the hearing, the Government's case consisted of five exhibits. (GEs 1-5) Applicant relied on two witnesses (including herself) and six exhibits. The transcript (Tr.) was received on January 31, 2025.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open to permit her the opportunity to supplement the record with documentation of her Chapter 7 bankruptcy schedules. For good cause shown, Applicant was granted seven calendar days to supplement the record. Department Counsel was afforded two days to respond. Within the time permitted, Department Counsel furnished a copy of Applicant's entire Chapter 7 bankruptcy petition (inclusive of schedules, but without a discharge), which was admitted without objection as GE 6.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated five delinquent debts exceeding \$42,000. Allegedly, these debts have not been resolved and remain outstanding.

Under Guideline H, Applicant allegedly (a) used marijuana from August 2020 to September 2021 and (b) was employed at a marijuana dispensary in her state of residence between August 2020 and September 2021, where she sold marijuana and received allotments of marijuana as part of her compensation.

In Applicant's response to the SOR allegations covered by Guideline F, she admitted most of the allegations (denying only the amount of the alleged debt listed under covered SOR ¶ 1.a) covered by SOR Guidelines F and H. She claimed her listed SOR debts were attributable to multiple periods of unemployment and a difficult pregnancy with her son in 2021. She also claimed that while she has had steady employment since February 2023, her spouse has had unsteady employment since 2020 due to his job loss during the COVID pandemic.

Addressing the related allegations covered by Guideline H, Applicant admitted both of the SOR allegations with explanations. She claimed she has not used marijuana since January 2023 and is currently enrolled in a drug test/screening program through her current employer. She further claimed she has no plans to use marijuana or any other drugs in the future.

Findings of Fact

Applicant is a 30-year-old civilian employee of a defense contractor who seeks a security clearance. Allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in February 2018 and has three children. (GE 1; Tr. 22) She earned a high school diploma in May 2013. Applicant did not report any military service. (GEs 1-2)

Since February 2023, Applicant has worked for her current defense contractor as a program specialist. (GEs 1-2) Previously, she worked for other employers in various job capacities. She reported multiple periods of unemployment between December 2022 and February 2023, between February 2022 and April 2022, and between March 2020 and August 2020. (GEs 1-2) From August 2020 to September 2021, she worked as a receptionist for a marijuana dispensary in the state of her residence. (GEs 1-2; Tr. 56) She has never held a security clearance. (GE 1; Tr. 56)

Applicant's finances

Between 2021 and 2023, Applicant accumulated five delinquent debts exceeding \$42,000. (GEs 2-5) She attributed her debt delinquencies to multiple periods of unemployment, a difficult pregnancy with her second child in 2021, her husband's difficulties in finding sustaining full-time work, and insufficient financial resources to cover all of her debts. (GE 2; Tr. 21-23) Both Applicant and her husband currently hold full-time employment.

Unable to pay off or work out payment arrangements with her creditors, Applicant and her husband petitioned for Chapter 7 bankruptcy relief in January 2005. (GE 6 and AEs A-D; Tr. 28-29) In her joint petition, she scheduled no secured claims and scheduled non-secured, non-priority claims of \$33,000 (inclusive of her SOR-listed debts). (GE 6; Tr. 42-43)

Worthy of note, Applicant listed her SOR ¶ 1.a debt as a non-secured claim of \$17,290 (correcting the \$37,463 amount listed in SOR ¶ 1.a) Her bankruptcy petition remains pending without a court-approved discharge and includes certificates of financial counseling. (AEs E-F) The first meeting of creditors is scheduled for February 5, 2025, and Applicant is not aware, to date, of any creditors objecting to her discharge. (Tr. 43)

Applicant's drug involvement

As a young teen in 2008, Applicant was introduced to marijuana (initially with her mother, sister, and cousin) The setting of her early marijuana use was always in her home. (GE 2) Her acquired method of use was through smoking, vape, and gummies. She associates with people who use marijuana (inclusive of her husband who has and continues to use marijuana daily). (GE 2; Tr. 35) Between 2008 and 2020, Applicant used marijuana sporadically over the course of a typical week before becoming a daily user, with her husband who was a daily user as well. (GE 2; Tr. 36-37) While working for a marijuana dispensary in her state of residence between August 2020 and

September 2021, she sold marijuana and received monthly allotments of the drug as part of her employment compensation. (GEs 1-2; Tr. 22, 36-37)

After departing her marijuana dispensary employment in September 2021, Applicant reduced her marijuana use, but continued to use the drug on weekends in social situations with friends and her husband. (Tr. 37-38) Occasionally, her mother, stepfather, and her husband's stepfather used marijuana in her presence. (Tr. 37-38) While in labor and pending the births of all three of her children, Applicant tested positive for marijuana in drug tests administered by her former employers. (G E 2)

Applicant assured that her mother recently ceased using marijuana altogether. (Tr. 38-39) As for herself, she has not used marijuana since January 2023 out of concern for her job. (Tr. 38-39) Although, she has continued to purchase marijuana for her husband (who continues to use marijuana weekly) on a couple of occasions since leaving her job with a drug dispensary. (Tr. 39) She expressed no intent of resuming her use and involvement with the drug in the future; although she did not supply a written statement of intent to avoid marijuana use in the future at the risk of losing her clearance should she elect to resume her use of the drug. (Tr. 22, 38-39)

While Applicant is subject to random drug testing with her current employer, to date, she has not been tested for illegal drugs. (Tr. 40) Asked whether she has ever attended any drug counseling or treatment programs, Applicant replied that she had not. (Tr. 40)

Endorsements

Applicant is well-regarded by her facility clearance officer (FSO). Her FSO credited her considerable growth and maturity in her work and overall exhibiting of trust and reliability in the execution of her professional responsibilities. (Tr. 48)

Policies

By virtue of the jurisprudential principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), “no one has a ‘right’ to a security clearance.” 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. Eligibility for access to classified information may only be granted “upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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, reliable information about the person, past and present, favorable and unfavorable.

The AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns. These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are considered together with the following ¶ 2(d) factors: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent:

Financial Considerations

The Concern: 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 or regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater

risk of having to engage in illegal acts or otherwise questionable acts to generate funds. . . . AG ¶ 18.

Drug Involvement

The Concern: The illegal use of controlled substances, to include the misuse of prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *Controlled substance* means any "controlled substance" as defined in 21 U.S.C. 802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

Burdens of Proof

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 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 "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[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

Security concerns are raised over Applicant's accumulation of delinquent debts over the course of several years. Her accrual of delinquent debts (five in all) raise trust, reliability, and judgment concerns about her current and future ability to manage her finances safely and responsibly. Additional security concerns are raised her past use and purchases of illegal drugs (marijuana).

Financial concerns

Applicant's multiple debt delinquencies warrant the application of two of the disqualifying conditions (DC) of the financial consideration guidelines. DC ¶¶ 19(a), "inability to satisfy debts" and 19(c), "a history of not satisfying financial obligations," apply to Applicant's situation.

Applicant's admitted debt delinquencies require no independent proof to substantiate them. See Directive 5220.6 at E3.1.1.14; *McCormick on Evidence* § 262 (6th ed. 2006). Her debt delinquencies are fully documented and create judgment issues as well over the management of her finances. See ISCR Case No. 03-01059 (App. Bd. Sept. 24, 2004).

Financial stability in a person cleared to protect classified information is required precisely to inspire trust and confidence in the holder of a security clearance that entitles the person to access classified information. While the principal concern of a security clearance holder's demonstrated difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in cases involving delinquent debts.

Historically, the timing of addressing and resolving payment delinquencies are critical to an assessment of an applicant's trustworthiness, reliability, and good judgment in following rules and guidelines necessary for those seeking access to classified information or to holding a sensitive position. See ISCR Case No. 14-06808 at 3 (App. Bd. Nov. 23, 2016); ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015); ISCR Case No. 14-00221 at 2-5 (App. Bd. June 29, 2016). In Applicant's case, she elected to use the federal bankruptcy process to discharge her debt delinquencies.

In the past, the Appeal Board has consistently imposed evidentiary burdens on applicants to provide documentation corroborating actions taken to resolve financial problems, whether the issues relate to back taxes, consumer, medical, or other debts and accounts. See ISCR Case No. 19-02593 at 4-5 (App. Bd. Oct. 18, 2021); ISCR Case No. 19-01599 at 3 (App. Bd. Jan. 20, 2020). T

To be sure, multiple periods of unemployment, a difficult pregnancy with her second child in 2021, her husband's difficulties in finding sustaining full-time work, and insufficient family financial resources collectively contributed to her inability to stay current with her debts. Applicant's multitude of extenuating circumstances and recent mitigation efforts merit application of MC ¶ 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."

Applicant's pre-bankruptcy initiatives to work out payment plans with her creditors and documented bankruptcy petition reflect positive efforts on her part to resolve her debts through legally afforded means in accordance with the criteria established by the Appeal Board for assessing an applicant's efforts to rectify his or her poor financial condition responsibly considering his or her circumstances. See ISCR Case No. 08-06567 at 2-3 (App. Bd. Oct. 29, 2009). Additional mitigating conditions applicable to Applicant's good-faith efforts to address her debts before turning to Chapter 7 bankruptcy relief are: MC ¶¶ 20(c), "the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit counseling service, and there are clear indications that the problem is being resolved or is under control" and 20(d), "the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts."

Applicant's bankruptcy petition and favorable prospects for obtaining a discharge within six months enable her to meet the Appeal's Board requirements for stabilizing her finances. ISCR Case No. 07-06482 (App. Bd. May 21 2008); see ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007)(citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000)); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999).

Drug and substance abuse concerns

Applicant's admissions to using and purchasing marijuana over a lengthy period of time (2004 through 2022) raise security concerns over judgment and risks of recurrence. On the strength of the evidence presented, two disqualifying conditions (DCs) of the AGs for drug involvement apply to Applicant's situation: DC ¶¶ 25(a), "any substance misuse"; and 25(c), "illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia," apply to Applicant's situation.

To Applicant's credit, she has ceased using marijuana and is committed to abandoning all involvement with the drug in the future. She is credited with remaining abstinent from marijuana use herself over the past 24 months and exhibits no visible signs or indications of succumbing to any risks or pressures she might encounter to return to illegal drug use in the foreseeable future. Applicant's assurances of sustained abstinence from illegal drugs are encouraging, although lacking in any formal written intent to abstain from future use of marijuana, with the understanding of the risk of a loss of a security clearance should she resume marijuana use in the future.

Considering all of the circumstances surrounding Applicant's involvement with marijuana and her recent initiatives to abstain from marijuana use, her efforts warrant limited application of two potentially available mitigating conditions (MCs) of the drug involvement and substance misuse guideline: MC ¶¶ 26(a), "the behavior happened so long ago, was so infrequent, or happened under such unusual circumstances that it is

unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment"; and 26(b),

the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to . . .
(2) changing or avoiding the environment where drugs were used , and providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national eligibility: . . .

partially apply to Applicant's situation.

Still, Applicant's lengthy personal history of marijuana use, her continued purchasing of the drug for herself and her husband, the continued use of marijuana by her husband in her presence, and the continued use of marijuana (occasionally in her presence) by other family members undercut her commitments to avert all risks of recurrence of marijuana involvement in the foreseeable future. Without more time and evidence of sustained abstinence from corroborating sources to establish a probative pattern of sustained abstinence from the use of illegal drugs over a more prolonged period of time and disassociation from those who continue to use them, mitigating conditions available to her are quite limited in scope.

While this is not a close case, even close cases must be resolved in the favor of the national security where doubt exists. See *Dept. of Navy v. Egan*, *supra*. Quite apart from any judgment reservations the Government may have for the clearance holder employed by a defense contractor, the Government has the right to expect the keeping of promises and commitments from the trust relationship it has with the clearance holder. See *Snepp v. United States*, 444 U.S. 507, 511n.6 (1980).

Whole-person assessment

From a whole-person perspective, Applicant has failed to establish enough independent probative evidence of her overall trustworthiness, reliability, and good judgment required of her. The whole-person assessment of Applicant's clearance eligibility requires consideration of whether her multiple delinquent debts (resolved with Chapter 7 bankruptcy petition) and years of involvement with the use and purchase of marijuana are compatible with minimum standards for holding a security clearance.

While Applicant is entitled to credit for her work in the defense industry, her efforts are not enough at this time to overcome drug recurrence risks associated with her considerable history of marijuana activity. So, while her efforts to resolve her delinquent accounts through bankruptcy are worthy of both extenuating and mitigating credit, overall trustworthiness, reliability, and good judgment have not been established.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and

circumstances in the context of the whole person. I conclude that while financial considerations security concerns are mitigated, illegal drug involvement concerns are not., Eligibility for access to classified information is denied.

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:

Guideline F (FINANCIAL CONSIDERATIONS): FOR APPLICANT

Subparagraphs 1.a-1.e For Applicant

GUIDELINE H (DRUG INVOLVEMENT): AGAINST APPLICANT

Subparagraphs 2.a-2.b: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Roger C. Wesley
Administrative Judge