



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



Appearances

For Government: Daniel O'Reilley, Esq., Department Counsel
For Applicant: *Pro se*

02/27/2025

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations), H (Drug Involvement and Substance Misuse), and E (Personal Conduct). Clearance is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on March 28, 2023. On January 4, 2024, the Defense Counterintelligence and Security Agency (DCSA) sent her a Statement of Reasons alleging security concerns under Guidelines F, H, and E. The DCSA acted under Executive Order 12968, *Access to Classified Information*, dated August 2, 1995; Department of Defense (DoD) Manual 5200.02, *Procedures for the DoD Personnel Security Program (PSP)*, dated April 3, 2017 (Manual); and Security Executive Agent Directive 4, dated December 10, 2016 (SEAD 4).

Applicant responded to the SOR on March 5, 2024, and requested a hearing. Department Counsel was ready to proceed on March 26, 2024, and the case was assigned to me on November 6, 2024. On December 10, 2024, the Defense Office of Hearings and Appeals notified her that the hearing was scheduled to be conducted by video teleconference on December 18, 2024. On December 17, 2024, the hearing was rescheduled for January 16, 2024. I conducted the hearing as rescheduled. Department

Counsel submitted Government Exhibits (GX) 1 through 3, which were admitted without objection. Applicant testified, presented the testimony of two witnesses, and submitted Applicant's Exhibit A, which was admitted without objection. I kept the record open until January 31, 2025, to enable Applicant to submit additional documentary evidence. She timely submitted Appellant's Exhibits (AX) B through M, which were admitted without objection. DOHA received the transcript on January 28, 2025.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a-1.e, 2.a, and 3.a and denied the allegations in SOR ¶¶ 1.f, 1.g, and 1.h. Her admissions are incorporated in my findings of fact.

Applicant is a 37-year-old technical writer employed by a defense contractor since February 2015. She was employed by another federal contractor from June 2010 to February 2015. She received a security clearance in July 2010. She has never married and has no children. She received a bachelor's degree in May 2014 and a master's degree in August 2019.

The SOR alleges eight delinquent debts reflected in a credit report dated April 13, 2023. The evidence concerning these debts is summarized below.

SOR ¶ 1.a: personal loan charged off for \$8,902. In October 2024, Applicant made an agreement to make monthly payments of \$218 for 34 months. (AX K) Her January 2025 credit report reflected that she is meeting the terms of her agreement. (AX A at 61)

SOR ¶ 1.b: account charged off for \$6,564. At the hearing, Applicant could not remember the source of this debt. (Tr. 46) After the hearing, she submitted evidence of a payment plan starting in December 2021, providing for monthly payments of \$189.39. (AX H) She has been making the payments as agreed. (AX H; AX I)

SOR ¶ 1.c: credit-card account charged off for \$2,852. Applicant settled this debt for less than the full amount in September 2023. (AX A at 12; AX E)

SOR ¶ 1.d: credit-card account placed for collection of \$2,771. Applicant settled this debt for less than the full amount in April 2024. (AX D)

SOR ¶ 1.e: credit-card account charged off for \$2,069. Applicant settled this debt for less than the full amount in May 2024. (AX A at 49)

SOR ¶ 1.f: credit-card account placed for collection of \$1,205. Applicant paid this debt in January 2025. (AX F)

SOR ¶ 1.g: telecommunications account placed for collection of \$694. Applicant settled this debt in November 2023. (AX A at 14-15)

SOR ¶ 1.h: credit-card account past due for \$190, with a total balance of \$282. Applicant paid this debt in September 2023. (AX A at 14-15; AX E)

When Applicant was interviewed by a security investigator in May 2023, she stated that her financial problems began in 2018 when her live-in boyfriend was laid off and then unemployed during COVID-19. They had been living beyond their means, and when they broke up in 2021, she was left with all the bills. (GX 3 at 12) At the hearing, she indicated that she was now living within her means, and she gives her mother about \$400 each month. (Tr. 53-54)

The SOR alleges that Applicant used marijuana with varying frequency from about February 2021 until “at least” May 2023, while she was granted access to classified information or holding a sensitive position. The SOR also alleges that she did not disclose her marijuana use when she submitted her SCA in March 2023. During her security interview in May 2023, she disclosed her marijuana use once or twice a month in social settings. She explained that it was legal in the jurisdiction where she resides, and expressed her willingness to discontinue using it if necessary to continue her employment. (GX 3 at 10) In her response to DOHA interrogatories in December 2023, she again disclosed her marijuana use and declared that she has no intention to use it in the future. (GX 3 at 6)

At the hearing, Applicant testified that marijuana is legal in the jurisdiction where she lives, and she did not know that it was illegal under federal law. She testified that it “wasn’t necessarily [her] idea to use marijuana.” The use was prompted by her friend, who had a prescription for marijuana and offered to share it. She declared that she does not intend to use it in the future. (Tr. 57-60) In her security interview and at the hearing, she stated that she did not disclose her marijuana use in her SCA because she did not know it was illegal. (GX 3 at 10; Tr. 60) There is no evidence in the record regarding local law limitations on the use of prescribed marijuana by someone for whom it was not prescribed.

Applicant’s supervisor, who served in the military for 20 years before working for a defense contractor, testified that she and Applicant were coworkers before she became Applicant’s supervisor. She testified that Applicant has a good reputation for “getting the job done” helping subordinates learn their jobs. She was not aware that Applicant allegedly used marijuana from February 2021 to May 2023 while holding a security clearance. Nevertheless, she would want Applicant on her team because of her outstanding duty performance. (Tr. 14-19)

A friend of Applicant, who has known her since they were both in the seventh grade, testified that Applicant is her best friend, her confidant, and her “unpaid therapist.” She is aware of Applicant’s use of marijuana and her delinquent debts. Applicant’s friend has experience as a credit analyst, has worked for banks for about 16 years, and has been assisting Applicant with her financial issues. She is aware of Applicant’s marijuana use and used marijuana with her five or six times in 2022. (Tr. 22-33)

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 adjudicative guidelines. 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* at 531. Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” See ISCR Case No. 17-04166 at 3 (App. Bd. Mar. 21, 2019). It is “less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “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. ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

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 [or her] 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* at 531.

Analysis

Guideline F, Financial Considerations

The security concern under this guideline is set out in AG ¶ 18:

Failure 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 or sensitive information. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable 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 and the evidence submitted at the hearing establish the following disqualifying conditions under this guideline:

AG ¶ 19(a): inability to satisfy debts; and

AG ¶ 19(c): a history of not meeting financial obligations.

The following mitigating conditions 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 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

credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

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

AG ¶¶ 20(a) is not fully established. Applicant's delinquent debts are recent and numerous. However, she has learned from her experience to live within her means, and her financial problems are unlikely to recur.

AG ¶¶ 20(b), 20(c), and 20(d) are established. Applicant's breakup with her boyfriend and his unemployment during COVID-19 were conditions beyond her control, and she has acted responsibly seeking help from a financial advisor, paying or settling as many debts as possible, and negotiating payment agreements for those that she could not afford to pay immediately.

An applicant who waits until his or her clearance is in jeopardy before resolving debts may be lacking in the judgment expected of those with access to classified information. ISCR Case No. 16-01211 (App. Bd. May 30, 2018) *citing* ISCR Case No. 15-03208 at 5 (App. Bd. Mar. 7, 2017). However, Applicant began resolving her debts well before she received the SOR and learned that her security clearance was in jeopardy.

Guideline H, Drug Involvement and Substance Misuse

The concern under this guideline is set out in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-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.

Applicant's admissions and the evidence submitted at the hearing establish the following disqualifying conditions under this guideline:

AG ¶ 25(a): any substance misuse (see above definition); and

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

The following mitigating conditions are potentially applicable:

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;

AG ¶ 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:

- (1) disassociation from drug-using associates and contacts;
- (2) changing or avoiding the environment where drugs were used; and
- (3) 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 security eligibility.

AG ¶ 26(a) is partially established. Although Applicant's use of marijuana was recent, her use only once or twice a month is arguably "infrequent," and it is not likely to recur now that Applicant understands that it is illegal under federal law and inconsistent with holding a security clearance.

AG ¶ 26(b) is not fully established. Although Applicant has acknowledged her drug involvement, she has not disassociated from her marijuana-using friend, and not changed her environment, and has not provided the signed statement of intent provided for in AG ¶ 26(b)(3).

On October 25, 2014, the Director of National Intelligence (the Security Executive Agent (SecEA)) issued DNI Memorandum ES 2014-00674, "*Adherence to Federal Laws Prohibiting Marijuana Use*," which states:

[C]hanges to state laws and the laws of the District of Columbia pertaining to marijuana use do not alter the existing National Security Adjudicative Guidelines An individual's disregard of federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations. As always, adjudicative authorities are expected to evaluate claimed or developed use of, or involvement with, marijuana using the current adjudicative criteria. The adjudicative authority must determine if the use of, or involvement with, marijuana raises questions about the individual's judgment, reliability, trustworthiness, and willingness to comply with law, rules, and regulations, including federal laws, when making eligibility decisions of persons proposed for, or occupying, sensitive national security positions.

On December 21, 2021, the SecEA promulgated clarifying guidance concerning marijuana-related issues in security clearance adjudications. It states in pertinent part:

[Federal] agencies are instructed that prior recreational marijuana use by an individual may be relevant to adjudications but not determinative. The SecEA has provided direction in [the adjudicative guidelines] to agencies that require them to use a “whole-person concept.” This requires adjudicators to carefully weigh a number of variables in an individual’s life to determine whether that individual’s behavior raises a security concern, if at all, and whether that concern has been mitigated such that the individual may now receive a favorable adjudicative determination. Relevant mitigations include, but are not limited to, frequency of use and whether the individual can demonstrate that future use is unlikely to recur, including by signing an attestation or other such appropriate mitigation.

Guideline E, Personal Conduct

The security concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . .

The following disqualifying condition is relevant:

AG ¶16(a): deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities;

This disqualifying condition is not established. Applicant’s omission of her marijuana use was not deliberate but was caused by her ignorance of federal law regarding marijuana. It apparently did not occur to her that her use of marijuana prescribed for another person might violate local law. No other disqualifying conditions under this guideline are established.

Whole-Person Analysis

Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. An administrative judge must evaluate an appellant’s security eligibility by considering the totality of the appellant’s conduct and all the relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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.

I have incorporated my comments under Guidelines F, H, and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). With response to Applicant's marijuana use while holding a security clearance, I have incorporated the SecEA guidance in my evaluation of Applicant's eligibility for a security clearance. I have considered that she has worked for federal contractors and held a security clearance since July 2010. She did not disregard federal law regarding marijuana use; she was unaware of it. Her naivete about the legality of marijuana use and her continued association with marijuana users give me pause, but the strong support from her supervisor and her candor, demeanor, and sincerity at the hearing have satisfied me that she will refrain from further illegal use of marijuana.

After weighing the disqualifying and mitigating conditions under Guidelines F, H, 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 delinquent debts, drug involvement, and failure to disclose her drug involvement in her most recent SCA.

Formal Findings

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

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a-1.h: For Applicant

Paragraph 2, Guideline H (Drug Involvement): FOR APPLICANT

Subparagraph 2.a: For Applicant

Paragraph 3, Guideline E (Personal Conduct): FOR APPLICANT

Subparagraph 3.a: For Applicant

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

LeRoy F. Foreman
Administrative Judge