



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 17-03777
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Kelly Folks, Esquire, Department Counsel
For Applicant: Leon J. Schachter, Esquire

03/29/2019

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted an application for a security clearance (e-QIP) on June 3, 2015. On March 12, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline H, Drug Involvement and Guideline E, Personal Conduct. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented within the Department of Defense on June 8, 2017.

On May 19, 2018, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on March 12, 2018. Another administrative judge was assigned the case on September 12, 2018. On December 19, 2018, a Notice of Hearing was issued, scheduling the hearing on January 29, 2018. The case was transferred to me on January 29, 2018, because of the unavailability of the assigned administrative judge. The hearing was held as scheduled. During the hearing, the Government offered five exhibits which were admitted as Government (Gov) Exhibits 1 - 5. Applicant testified, called two witnesses, and offered one exhibit which is admitted as Applicant Exhibit (AE) A, which consisted of 15 subparts without objection. The transcript was received on February 7, 2018. Based

upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In her answer to the SOR, Applicant admits to all the SOR allegations, some with explanations.

Applicant is a 36-year-old senior systems analyst for a DOD contractor (Contractor 1) who seeks a security clearance. She has been employed with Contractor 1 since February 2018. She previously worked for Contractor 1 from May 2015 to March 2017. Between March 2017 and February 2018, she worked for another DOD contractor (Contractor 2). She was granted an interim security clearance in September 2015. She has a bachelor's degree. She is married, has a four-year-old daughter, and is expecting another child. She is the primary breadwinner. Her husband stays at home to care for the children. (Tr. 22, 43-44, 53; Gov 1) (Note: The facts in this decision do not specifically describe employment, names of witnesses, or locations in order to protect Applicant and her family's privacy. The cited sources contain more specific information.)

Under the drug involvement concern, the SOR alleged Applicant used marijuana from 2015 to November 2017, after she was granted access to classified information (SOR ¶ 1.a: Gov 2 at 3, 8); received treatment from Dr. R. from May 2012 to November 2013 for Drug Dependence (SOR ¶ 1.b Gov 2 at 7; Gov 3 at 2); received treatment at a substance abuse institute from April 2007 to May 2011 for Drug Dependence (SOR ¶ 1.c: Gov 2 at 7; Gov 3 at 2,4); and received treatment at a county health substance abuse center from August 2000 to April 2001 (SOR ¶ 1.d: Gov 2 at 11).

Additional allegations include: use of cocaine with varying frequency from January 2007 to April 2010 (SOR ¶ 1.e: Gov 2 at 9); use of the following prescription medications without a prescription: OxyContin, Oxycodone, Heroin, and Methadone between December 2003 and October 2008 (SOR ¶ 1.f: Gov 2 at 8-9); used marijuana with varying frequency between 1996 and November 2017 (SOR ¶ 1.g: Gov 2 at 11; Gov 3 at 3); misuse of prescription opiates from December 2003 to December 2008 (SOR ¶ 1.h: Gov 3 at 3); purchase of crack cocaine for personal use from January 2005 to January 2010 (SOR ¶ 1.i: Gov 3 at 3); illegally purchased opiates for personal use between May 2003 and December 2009 (SOR ¶ 1.j: Gov 3 at 3); and a July 2001 arrest for Possession of Marijuana and Drug Paraphernalia (SOR ¶ 1.k: Gov 2 at 11; Gov 4; Gov 5).

The same conduct is cross-alleged under the personal conduct concern. (SOR ¶ 2.a) In her response to the SOR, Applicant admits the allegations, but explains some of her illegal drug use was more intermittent and sporadic than the language of the SOR implies. (Response to SOR, dated May 19, 2018)

Applicant began drinking alcohol and using marijuana at age 12. Her alcohol use varied from daily, when she was younger, to once every few months, to once a week during the past few years before she quit drinking in November 2017. Her marijuana use was daily when she was younger. She stopped using for several years and her

most recent use occurred once or twice a year. She stopped using marijuana after her November 2017 use. Applicant first used cocaine when she was 16. Her cocaine use was sporadic from age 16 to 22. From age 22 to 27, she used cocaine on varying occasions from several times a week to once a month. (Gov 3 at 3)

Applicant first used opiates around 2001, when she was 19. She became addicted to opiates when she was 22. She would use any form of opiate she could find in order to keep from going into withdrawal. She eventually used heroin because it was cheaper. From 2007 to 2011, Applicant was prescribed and administered Methadone to combat her opioid addiction. In 2012, she began seeing a psychiatrist, Dr. R., who prescribed her the drug suboxone to help her become free of opiates and to help treat her underlying psychological issues. She was able to ween herself off the suboxone by November 2013 (age 32). She has not abused opiates since that time. In November 2015, she was prescribed Percocet after she gave birth to her daughter. She has not used opiates of any sort since her daughter's birth. (Gov 3 at 3)

Although not alleged in the SOR, Applicant sporadically used LSD (twice a year to every other year) from 1998 to 2004 (age 14 – 21); psilocybin (mushrooms) on three occasions between 1999 to 2004 (age 17 – 21); and crystal methamphetamine a few times in 2006 (age 23). (Gov 3 at 3) Because the use of these drugs was not alleged in the SOR, I will not consider the use under the disqualifying conditions. However, I will consider them under the extenuation and mitigating circumstances. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

(a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole-person analysis under Directive Section 6.3.

Id. (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)).

In July 2001, Applicant had one drug-related arrest for Possession of Marijuana and Drug Paraphernalia. After her arrest, she was ordered to attend treatment at the county substance abuse center. SOR ¶ 1.d alleges that Applicant received a diagnosis of drug dependence during this treatment. The records from this treatment program are not in the record, so the diagnosis of drug dependence during this treatment is not confirmed. (Gov 4; Gov 5)

Applicant voluntarily attended drug treatment at an institute that prescribed her methadone from April 2007 to May 2011. Applicant realized that if she continued using heroin it would be a death sentence. The methadone replaced her heroin cravings. However, during this time frame, Applicant was offered and used crack cocaine on various occasions. Her explanation at hearing was that the methadone clinic was in a

bad area and it was common for other drugs to be available. (Tr. 57-58; Gov 1 at 41-153; Gov 2 at 7; Gov 3 at 2,4)

After several years of using methadone, Applicant felt that she was replacing one addictive substance for another. In 2012, she sought the assistance of Dr. R., a psychiatrist, who treated her for drug dependence as well as her issues with depression and anxiety. Dr. R. prescribed Applicant suboxone. If applied properly, suboxone is helpful for heroin users to ween off heroin and methadone. Applicant wanted to be completely clean from both narcotics. She was able to be completely free of opiates by November 2013. (Tr. 25-27, 51-53; Gov 1 at 46; Gov 2 at 7; Gov 3 at 2-4) Applicant continues to take medication to deal with her depression and anxiety. (Gov 3 at 4-7)

When Applicant completed her security clearance application on June 13, 2015, she fully disclosed her history of illegal drug use. When commenting on the extent of her drug use in Section 23 – Illegal Use of Controlled Substances, Applicant stated several times:

I last smoked marijuana about 2 ½ years ago. I have been clean from all illegal substances for about 4 years. I was once addicted to opiates, but I have undergone extensive treatment for the disease of addiction and for the underlying medical conditions for which I was self medicating. I am a different person now than I was back then. I have married, started a family and earned my bachelor's degree (graduating with honors). I do not associate with those who use illegal drugs, nor do I have any desire to use again.

I am a proud mother to a beautiful 7 month old baby girl. I want to be there for her in every way I can, and I want to set a good example for her (and for my future children). I want to continue to be a productive and law-abiding member of society. I intend to improve upon myself and build a good life for myself and my family. (Gov 1 at 40-43)

Despite her good intentions, Applicant used marijuana on two occasions in 2017. On the first occasion, she used marijuana in April 2017 when her cousin died unexpectedly. She was at a post-funeral gathering, was drinking alcohol, and admits to being intoxicated. Her cousin lit up a marijuana joint and Applicant smoked the joint with her cousin. The last time she used marijuana was in November 2017. Applicant was on a business trip. The hotel where she stayed had free happy hour. Applicant drank several alcoholic drinks during happy hour. She stepped outside and a stranger was outside smoking a marijuana joint. The stranger offered the joint to Applicant and she used the marijuana joint with the stranger. At the time of use, Applicant was aware that marijuana use is illegal under federal law and is against DOD policy. (Tr. 24, 46-51, 59-63)

In response to interrogatories sworn by Applicant on February 9, 2018, Applicant clarified some inaccuracies in the sworn statement she provided during a background investigation interview on June 6, 2017. In response to Item: 014 of her Personal Subject Interview, Applicant commented:

Investigator states "Subject's last use of marijuana was on 01/2017" – this is incorrect, last use at the time was 4/2017. Investigator also stated "subject smoked by herself" – this is incorrect; I was at a family gathering after a funeral service and smoked with a cousin. Investigator also stated: "Subject states she smokes about one a year, but stopped after 01/2017 due to having a new baby and a new job." - This is incorrect; I stopped smoking marijuana around 2007 and did not smoke again until 2015 (I had my daughter 11/2014). Use has been very infrequent since 2015. (Gov 2 at 3)

Applicant testified she had been drinking alcohol on both occasions when she used marijuana in 2017. Drinking alcohol made her uninhibited. She claims that she did not abuse alcohol. She never got into trouble. Eventually, she realized the connection of her alcohol use and her decision to use marijuana. Applicant claims she would not have used marijuana if she had not been drinking. Applicant sought help by attending Alcoholics Anonymous (AA) and developed a support system around her. She attends AA meetings. She has a sponsor and attends a home group. She claims AA helped her look at her life defects and helped her to become a better person. Her life is now different and she has a strong network of friends. (Tr. 28-29)

Applicant attends two AA meetings each week. During the Sunday meeting, she makes coffee and helps out in a service position. She also attends a program called Celebrate Recovery which is a church-based 12 step program that she attends on Friday night with her daughter. Applicant explained the 12 steps as well as the books that she uses in the program. She recently received her one-year chip celebrating her sobriety. She has abstained from alcohol for a year. She abstained from marijuana for 1 ½ years. Her last use of illegal opiates was over 10 years ago. Applicant's definition of sobriety is abstinence from all mind-altering substances. Her goal is to continue to work the program and help others with sobriety. (Tr. 29-36)

Applicant admits that she did not dedicate herself to her previous treatment programs. She claims the difference is now she is actually working the program. Attending AA has been a blessing for Applicant. Attending meetings helps her maintain sobriety. She is happier when she is helping other people and working on herself. Applicant testified that her sober life is too important to give up. (Tr. 37-40, 68)

Ms. S., Applicant's AA Sponsor, testified during the hearing. She is retired and has never held a security clearance. She met Applicant over a year ago at an AA meeting. After the meeting, Applicant approached her and asked if she would be her sponsor. As a sponsor, she provides support and helps Applicant work through the 12 steps. She says Applicant has worked hard at her steps and has an understanding of what happened in her life and how her life is now different. She has seen a lot of changes in Applicant over the past year. Applicant now has a fine appreciation of the gifts that she has in her life. She also understands that she cannot use any kind of substance that is considered a drug. Ms. S. testified, "A drug is a drug is a drug. Whether it be a legal drug, illegal drug, or alcohol. It is a mind-altering substance." (Tr. 79-83)

Ms. S. testified that Applicant not only attends meetings, but is a home group member. She took a service position and developed close friendships with people who are living sober lives and getting their lives on track. (Tr. 81) Applicant understands that when she drinks alcohol, she is at risk of using drugs. Ms. S. said that Applicant went to great lengths to become clean and sober. She meets with Applicant every Sunday and talks to her several times during the week. Applicant has reading assignments. The assignments are used to gain a clear understanding of what recovery means. (Tr. 81, 83-84)

Over the past year, Applicant has become more self-aware. She is honest and open. She is working on making amends to her family and other people. She is accountable for her actions. She is aware of the damage she caused and the underlying circumstances. Applicant has a good grasp on recovery. She sometimes needs encouragement, but understands that this is “a life and death business.” She is very proud that Applicant recently received her one year chip. Applicant has worked very hard in achieving and maintaining sobriety. She believes that Applicant will maintain sobriety indefinitely. (Tr. 85-91)

Applicant provided a formal statement indicating that she has no future intent to use any illegal controlled substances or abuse prescription drugs. She is willing to undergo random drug testing and agrees to be subject to revocation of her security clearance in the event of any future positive drug test. (AE A Tab 13, Exhibit G)

Whole-Person Factors

Ms. B., Applicant’s current supervisor, testified on her behalf. She currently holds a secret clearance and has an interim top secret clearance. She met Applicant in the fall 2015. They were co-workers at Contractor 1. They became friends outside of work as well. Applicant left to work for Contractor 2 for about a year. She returned in February 2018. Ms. B. became her supervisor when she returned. Ms. B. describes Applicant’s duty performance as excellent. (Tr. 71-72)

Ms. B. is aware of the SOR allegations. She is aware that Applicant used marijuana while holding an interim security clearance. During the year Applicant worked Contractor 2, Applicant told Ms. B. that while she was on official travel she got drunk and smoked marijuana. Applicant told Ms. B. that she needed help because her drinking was impairing her decision making. Applicant then began to attend AA and another church-based recovery program. (Tr. 72-74)

Ms. B. would not recommend someone for a security clearance who is currently using illegal drugs. She states that Applicant is a sober person who is taking measures to stay sober. She is dedicated to her recovery program. She is aware Applicant attends AA meetings as well as another church-based recovery program. Applicant has a strong will to stay sober. Applicant’s husband, family, and co-workers support her efforts to stay sober. Ms. B. is confident Applicant will remain sober and has no reservations with Applicant holding a security clearance. (Tr. 73-76) Ms. B. also wrote a letter of recommendation on Applicant’s behalf saying similar things. (AE A, Tab 11)

Mr. T., the director of IT, Client Solutions, for Applicant's current employer, has known Applicant for three years. He worked with her on daily basis between May 2015 and March 2017. They have also become friends and occasionally socialize outside of work. He has reviewed the SOR and is aware of the nature of the government's security concerns. He does not believe the allegations are reflective of Applicant's character, patriotism, or willingness or ability to protect classified information. He says Applicant is one of the most genuine people he knows and possesses a high degree of integrity, responsibility, and honesty. He recommends her for a security clearance. (AE, Tab 8, Ex F1)

Mr. Y., Applicant's program manager at Contractor 2, provided a statement indicating Applicant was highly recommended candidate for a job as program manager. She interviewed well and was hired. She worked for Contractor 2 from 31 March 2017 to 7 February 2018. She left Contractor 2 because of some funding-related work stoppages in her division. During her time in Contractor 2's employ, Mr. Y. found Applicant performed at a high level. She was highly dependable and responsible. He is familiar with the allegations in the SOR, but claims the allegations bear no resemblance to the person who he worked with over the past year. They interacted many times during the day when she worked at Contractor 2. She had no appearance of being under the influence or inebriated. She is a self-sufficient and responsible mother. Based on his interaction with Applicant, he believes the U.S. Government would benefit from Applicant being granted a security clearance. He believes the issues alleged in the SOR have been resolved. She sought help, got clean, and turned her life around. Mr. Y. states, "Based on my time working with [Applicant] she is concentrating her time and efforts on expanding her professional skill set, maintaining a great work ethic, raising her family, and moving on from her past indiscretions. I feel that if allowed to continue working as a cleared employee she would continue down this path." (AE A, Tab 10, Exhibit F3)

One Applicant's co-workers and her former boyfriend's sister provided favorable reference letters on her behalf. (AE A, Tab 9 , Ex F2 and Tab 12, EX F5) Applicant provided copies of her 2015, 2016, and 2017 Performance Reviews. All were favorable. (AE A, Tabs 1 -4). Applicant often contributes to local charities and "Go Fund Me" causes. (AE A, Tabs 6-7)

Policies

When evaluating an applicant's suitability for a security clearance, the 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, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the

“whole person concept.” The 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 national security eligibility will be resolved in favor of the 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon 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 that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Guideline H, Drug Involvement

The security concern relating to the guideline for Drug Involvement is set out in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription drug 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.

The guideline notes several disqualifying conditions that could raise security concerns. I find the following drug involvement disqualifying conditions apply to Applicant's case.

AG ¶ 25(a) any substance misuse;

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

AG ¶ 25(d) diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of substance use disorder;

AG ¶ 25(f) any illegal drug use while granted access to classified information or holding a sensitive position; and

AG ¶ 25(g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

The SOR alleges and Applicant admits to a long history of polysubstance abuse from 1996 to November 2017, including marijuana, cocaine (to include crack cocaine), OxyContin, Oxycodone, Heroin, and Methadone. At times, Applicant illegally purchased and possessed illegal substances. AG ¶ 25(a) and AG ¶ 25(c) apply.

Applicant was treated by Dr. R. for Drug Dependence (Opiates) from May 2012 to November 2013, and received treatment at an institute from April 2007 to May 2011 for drug dependence. AG ¶ 25(d) applies.

Applicant's last use of marijuana occurred on two occasions in 2017, after she had been granted an interim security clearance. AG ¶ 25(f) applies. I find AG ¶ 25(g) applies because although she stated on her June 2015 security clearance questionnaire that she had no desire to use illegal drugs again, she illegally used marijuana in April 2017 and November 2017.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline H, Drug Involvement. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (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. September 22, 2005))

Guideline H also includes examples of conditions that could mitigate security concerns arising from drug involvement. The following mitigating conditions potentially apply to the Applicant's case:

AG ¶ 26(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; and

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) does not apply because Applicant's last use of marijuana occurred in November 2017, after she had been granted an interim security clearance. Applicant's last use occurred with a stranger when she was on travel for her employer. This raises concerns about Applicant's trustworthiness, reliability, and good judgment. Such conduct made her vulnerable to being compromised. Considering her long history of polysubstance abuse, it is too soon to conclude that she will remain drug free.

AG ¶ 26(b) partially applies in that Applicant has not used illegal drugs since November 2017, and she signed a statement of intent to refrain from all illegal drug involvement. However, this mitigating condition is given less weight because Applicant stated on her June 2015 security clearance questionnaire that she had no intent to use illegal drugs in the future, yet she illegally used marijuana on two occasions after being granted an interim security clearance.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct 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 the national security or adjudicative processes.

The following disqualifying conditions potentially apply to Applicant's case: AG ¶ 16(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information; and

AG ¶ 16(e) personal conduct, or concealment of information about one's conduct that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

- (1) engaging in activities which, if know, could affect the person's personal, professional, or community standing.

AG ¶ 16(c) applies to Applicant's marijuana use of two occasions after being granted a security clearance. Applicant's use of marijuana in June and November 2017 raises issues about her judgment, reliability, and willingness to comply with rules and regulations. This raises doubts as to Applicant's ability to protect classified information.

AG ¶ 16(e) applies because Applicant's illegal marijuana use has the potential to affect her personal, professional, or community standing. When Applicant used marijuana she was a mature woman. Despite her past history of illegal drug use, she was given the opportunity to demonstrate her trustworthiness and was granted an interim security clearance. She abused that trust and demonstrated poor judgment when opting to use marijuana on two occasions after being granted an interim security clearance.

Under Guideline E, the following mitigating conditions potentially apply in Applicant's case:

AG ¶ 17(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

AG ¶ 17(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

AG ¶ 17(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

AG ¶ 17(c) does not apply. While Applicant's marijuana use occurred about a year ago, it is considered recent. Considering her long history of illegal drug use, not enough time has passed to conclude that Applicant will not use illegal drugs in the future.

AG ¶ 17(d) applies because Applicant acknowledged her mistakes and has been an active member of AA for over a year. She is taking steps to deal with her problems. However, not enough time has passed to demonstrate that Applicant will remain drug free in the future.

AG ¶ 17(e) applies because Applicant has openly disclosed her illegal drug use. This mitigating condition is given less weight because Applicant's most recent use of marijuana occurred on two occasions after being granted an interim security clearance. Applicant was aware that marijuana was illegal under federal law and against DOD policy. Serious questions are raised about Applicant's judgment, reliability and trustworthiness.

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 the applicant's conduct and all relevant 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.

Applicant is a devoted wife and mother. She is well regarded by her supervisor and co-workers. She should be commended for working on her addiction issues and earning her bachelor's degree. I found Applicant to be honest during the hearing. However, serious questions are raised about Applicant's judgment because of her decision to illegally use marijuana on two occasions after being granted an interim security clearance. While Applicant is commended for seeking help through AA, after her last use of marijuana, it is too soon to conclude there is no risk in granting Applicant a security clearance based on her long history of polysubstance abuse. In cases where there is doubt, I am required to rule in favor of national security. Security concerns under Drug Involvement and Personal Conduct are not mitigated.

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:

AGAINST APPLICANT

Subparagraph 1.a – 1.k:

Against Applicant

Paragraph 2, Guideline E:

AGAINST APPLICANT

Subparagraph 2.a:

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.

ERIN C. HOGAN
Administrative Judge