



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



In the matter of:)
)
) ISCR Case No. 18-02216
)
Applicant for Security Clearance)

Appearances

For Government: Mary M. Foreman, Esq., Department Counsel
For Applicant: *Pro se*

06/12/2019

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline H, drug involvement and substance misuse. Eligibility for access to classified information is granted.

Statement of the Case

On October 15, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H, drug involvement and substance misuse. The action was taken under Executive Order (EO) 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) effective on June 8, 2017.

Applicant answered the SOR on November 19, 2018, and requested a hearing before an administrative judge. The case was assigned to me on February 25, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 12, 2019. I convened the hearing as scheduled on April 17, 2019. The Government offered

exhibits (GE) 1 through 3. GE 1 and 3 were admitted without objection. Applicant objected to a sentence in GE 2. The objection was sustained, and the remainder of the document was admitted without objection. Applicant and one witness testified on her behalf. Applicant offered Applicant Exhibits (AE) A through G. There were no other objections to the exhibits offered, and they were admitted into evidence. DOHA received the hearing transcript on April 30, 2019.

Request for Administrative Notice

Department Counsel submitted Hearing Exhibit I, a written request that I take administrative notice of certain facts about specific controlled substances that are alleged in the SOR. Applicant did not object, and I have taken administrative notice of the facts contained in the request that are supported by source documents from official U.S. Government publications.

Findings of Fact

Applicant admitted all of the allegations in the SOR, except the allegation in ¶ 1.a, which she partially denied due to the dates alleged. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 43 years old. She graduated from college in 1998. She married in 2005 and divorced in 2007. She remarried in 2010. She has two children ages four and six years old. She has worked for her present employer, a federal contractor, since October 2016. Before then, from 2000 to 2016, she worked in different departments at a university. (Tr. 23-26; GE 1; AE B)

Applicant completed a security clearance application (SCA) in December 2016. She was interviewed by a government investigator in January 2018, and completed government interrogatories in August 2018. She disclosed and admitted all of her past illegal drug use and activity as follows:

Marijuana use with varying frequency from January 1992 to September 2013.

Nitrous Oxide use on various occasions from February 1992 to June 2016.

Sold Nitrous Oxide in 2007 on at least two occasions.

Mushrooms use with varying frequency from about August 2001 to May 2013.

Ecstasy use approximately six times from August 2002 to May 2009.

LSD use on various occasions from August 2003 to May 2011.

2C-B, a hallucinogenic, used two times from 2003 to 2004.

2C-I, a hallucinogenic used in July 2003.

Peyote, used in 2004.

Foxy, a hallucinogenic, used in July 2007.

DMT, a hallucinogenic, used in 2008.

Poppers, an inhalant, used in 2009.

Applicant disputed the date alleged regarding her use of hallucinogenic mushrooms. She admitted she knowingly used mushrooms from 2001 to 2013. In June 2017, she attended a memorial service for a friend. She had previously used mushrooms with some of the people who were also in attendance, but she had not seen them for a while. There was a spiritual ceremony that included the leader dabbing oil on each attendee's forehead and saying a blessing. The oil had mushroom extract in it. Because of the nature of the ceremony, she did not decline the blessing. She disclosed this information in her background interview. She testified that at the time, she did not consider the potential implications or effects the mushrooms might have on her. She stated after receiving the oil dab she did not feel any dramatic effect from the oil, but became aware of a very slight altered feeling similar to consuming half of a can of beer. She testified that she felt a duty to report this incident during her background interview even though it was not an intentional choice at the time to abuse drugs. (Tr. 38-40, 44-50; GE 2, 3)

Applicant started using marijuana in high school. She estimated that from 1997 to 2007, she used it about six times a year. She estimated she used marijuana with her friends and her spouse from 2008 to 2013, about eight times a year. She used it socially and to relax. She estimated she used LSD about eight times from 2003 to 2011. She estimated she used Ecstasy about six times from 2002 to 2009. She used Poppers, DMT, Foxy, and 2C-B once. She used 2C-I twice. She said that except for her marijuana and LSD use, her use of other illegal drugs was before her second marriage. (Tr. 54, 61-75)

Applicant testified that a defining time in her life was when she became a mother and it profoundly changed her lifestyle and social community. She does not want anything to prevent her from giving her children the best opportunities that she can. Because any illegal drug use would prevent her from doing so, she said she stopped using illegal drugs in 2013. Becoming a mother also led her to improve her professional life. Since she began working for her current employer she has been promoted. (Tr. 27-29, 33, 77-79; GE 1)

Applicant admitted she used Nitrous Oxide until June 2016, a period of time after she stopped using other drugs. Because it was legal to obtain, she was unaware it was illegal to inhale. It is commonly used in dental and medical procedures and its effect wear off safely and quickly. She purchased it twice in 2007 and sold some to friends at parties as a convenience. She admitted in her SCA that in hindsight she realized it was probably

illegal to inhale it. She did not sell it to make a profit, but did make a small one. Her use of Nitrous Oxide after having children was to help her relax. She has not used it since 2016. (Tr. 33-38, 50-54, 66-68, 77-79, 82-83; AE D)

Applicant testified that she does not believe her husband still uses marijuana, but has not asked him. He has not used it in their home and they have not used it together since 2013. She credibly testified that since becoming a mother her priorities have changed, and she is focused on raising her family. She admitted that before having children, she exhibited behavior where she sought to find different types of “highs.” (Tr. 60-61, 66-67, 79-80)

Applicant testified and provided a written statement that she does not intend to use illegal drugs in the future. Since becoming a mother she has taken management and technical courses to improve herself. She is focused on self-development through exercise and martial arts. She testified that she has disassociated herself from her friends who use drugs. She avoids places where there may be illegal drugs. Her social activity is focused on her two young children and husband. (Tr. 40-41, 71, 77-79; AE E)

Applicant testified that she has never tested positive for illegal drug use and has not been evaluated or diagnosed with a substance abuse disorder. She voluntarily disclosed all of her drug use. (Tr. 74-75).

Applicant’s supervisor testified on her behalf. He has observed her daily for the past two and a half years. She is a valued employee and exhibits exceptional talent in her field. She shared with him her past drug use. He has not witnessed any indication that she continues to use drugs. He trusts her and believes she has exercised good judgment. (Tr. 86-91)

Applicant provided character letters from her manager, a former supervisor for four years, and a friend. She is described as honest, knowledgeable, trustworthy, dependable, thoughtful, deliberate, and stable. She exhibits a commitment to hard work; exercises sound judgment; and since becoming a parent is steadfast in ensuring she is a positive role model for her children. (Tr. 31; AE C)

Policies

When evaluating an applicant’s national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 an applicant may deliberately or inadvertently fail to 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).

Analysis

Guideline H: Drug Involvement and Substance Misuse

The security concern relating to the guideline for drug involvement and substance misuse 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.

AG ¶ 25 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) any substance misuse; and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

From approximately 1992 to approximately 2016, with varying frequency Applicant used illegal drugs as noted above. She sold Nitrous Oxide on two occasions. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 26 are potentially applicable:

- (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
- (b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions to overcome the 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 being 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.

Applicant voluntarily disclosed all of her past illegal drugs use in her SCA, background interview, and interrogatories. Her testimony was candid and forthcoming. She disclosed that after completing her SCA, she attended a memorial service where an oil with mushroom extract was dabbed on her forehead. She noticed it gave her a slightly altered feeling and in the interest of being totally honest, she disclosed this event to the government investigator. Applicant's past drug use is extensive. I believe she made a lifestyle change. I found her testimony credible that she does not intend to use illegal drugs in the future. She is aware of the impact future drug use will have on her ability to retain her job and its impact on her children. She has disassociated herself from friends with whom she used drugs with in the past. She signed a statement of intent to not use illegal drugs in the future. She disclosed her past drug use to her supervisor who then testified on her behalf. She has maintained an acceptable period of abstinence from illegal drug use. Although she was past the age of youthful indiscretion when she continued to

use illegal drugs and was beyond the experimental stage of drug use, I believe that she recognizes the impact that any future illegal drug use and subsequent ramifications could have on both her career and her life. I find the above mitigating conditions apply.

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 the circumstances. The 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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline H in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is an intelligent 43-year-old wife, mother, and exceptional employee. She has an extensive history of illegal drug use. She credibly testified that the turning point in her life was when she became a mother. She has abstained from using illegal drugs for an acceptable period of time. Based on her honest disclosures in her SCA, background interview, interrogatories, and testimony, I believe illegal drug use is in her past and she will not use illegal drugs in the future. The record evidence does not leave me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline H, drug involvement and substance misuse.

Formal Findings

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

Paragraph 1, Guideline H:

FOR APPLICANT

Subparagraphs 1.a-1.l: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge