



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



In the matter of:)
)
) ISCR Case No. 18-02864
)
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

June 25, 2019

Decision

Lokey Anderson, Darlene D., Administrative Judge:

Statement of the Case

On November 20, 2017, Applicant submitted security clearance applications (e-QIP's). (Government Exhibit 2.) On December 19, 2019, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued 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 within the DoD after June 8, 2017.

Applicant responded to the SOR (Answer) on February 5, 2019. (Government Exhibit 1.) She requested that her case be decided by an administrative judge on the written record. Department Counsel submitted the Government's written case on February 14, 2019. A complete copy of the File of Relevant Material (FORM), containing three Items, was received by Applicant on February 28, 2019. She was

afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not submit anything in response to the FORM within the 30-day period. DOHA assigned the case to me on May 28, 2019.

Findings of Fact

Applicant is 30 years old. She is unmarried and has no children. She has a Bachelor's degree. She is employed by a defense contractor as an Administrative Professional II. She is seeking to obtain a security clearance in connection with her employment.

Guideline H - Drug Involvement and Substance Misuse

The Government alleges that the Applicant has used controlled substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose, which can raise questions about an individual's reliability and trustworthiness.

Applicant began working for a defense contractor in October 2017. She has never held a security clearance before. From May 2005 to November 2017, Applicant used marijuana on a daily basis. She states that she uses marijuana to treat her anxiety and mental disorders. She also states that she no longer smokes marijuana on a daily basis. She further states that she intends to continue using it to treat her anxiety and mental disorders if she is unable to get a prescribed medication that does not have negative side effects. She indicates that she will speak to her therapist about seeking other solutions than marijuana. (Government Exhibit 3.)

To provide some background, Applicant suffers from manic depression, bipolar mood disorder, and panic disorder. She self-treats her mental health disorders with marijuana one time to two times weekly at present. At some point, she was prescribed medication by her therapist but that made her feel bad, so she stopped using her prescribed medication and went back to using marijuana. Applicant indicates that she smokes alone on the weekends when she does not have to drive. She states that she will only stop using marijuana if she is prescribed a medication that does not make her feel bad. Applicant has never incurred any financial difficulties as a result of her marijuana use. (Government Exhibit 3.)

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 to be 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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.

Directive ¶ E3.1.14, requires the Government to present evidence that establishes 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information seeks to enter 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 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 adverse 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 forth at 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.

The guideline at AG ¶ 25 contains three conditions that could raise a security concern and may be disqualifying:

- (a) any substance misuse (see above definition);
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia, and
- (f) any illegal drug use while granted access to classified information or holding sensitive position; and
- (g) continued drug involvement.

The guideline at AG ¶ 26 contains conditions that could mitigate security concerns. None of the conditions are 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 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.

None of the mitigating factors demonstrate full mitigation. Applicant is new to the defense industry and has never held a security clearance before. She has a long history of marijuana use. She has been self-treating her anxiety and mental health disorders with marijuana for the past fourteen years. Until two years ago, she used it on a daily basis. Now she uses it once or twice a week. Marijuana is illegal under Federal law and is prohibited while holding a security clearance. Applicant has chosen to continue using marijuana to treat her conditions instead of using a prescribed drug that might have negative side effects.

Applicant's extended and frequent use of marijuana calls into question her judgment. Applicant's conduct precludes a finding of good judgment, reliability, and the ability to abide by rules and regulations. To be entrusted with the privilege of holding a security clearance, one is expected to know and understand the rules and regulations that apply to them, and to always abide by those rules. Under the particular facts of this case, Applicant plans to continue to use marijuana, knowing it is against Federal law to do so. Applicant is clearly is not eligible for access to classified information.

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(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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline H in my whole-person analysis. Applicant has failed to provide sufficient evidence to demonstrate that she meets the qualifications for a security clearance.

Overall, the record evidence leaves me with many questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Drug Involvement and Substance Misuse security concerns.

Formal Findings

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

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a., and 1.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 national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge