



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-00465
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

08/19/2019

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline H, drug involvement and substance misuse, and Guideline E, personal conduct. Eligibility for access to classified information is denied.

Statement of the Case

On April 1, 2019, 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 and Guideline E, personal conduct. 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 on June 8, 2017.

Applicant answered the SOR on May 9, 2019, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the

Government's file of relevant material (FORM), and Applicant received it on June 19, 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. The Government's evidence is identified as Items 1 through 4. Applicant submitted a five-page document marked as Applicant Exhibit (AE) A. There were no objections to any documents, and AE A and Items 1 through 4 are admitted into evidence. The case was assigned to me on August 7, 2019.

Findings of Fact

Applicant admitted all of the SOR allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 44 years old. She earned a bachelor's degree in 1997 and a master's degree in 2007. She married in 2014 and has no children. She has worked for a federal contractor since 2004. She was granted a secret clearance in 2013, and access to special programs from January 2016 to March 2016.

Applicant completed a security clearance application in September 2013. In it she reported that in the past seven years she had not used any illegal drugs or controlled substances. (Item 2)

In Applicant's answer to the SOR, she stated:

My personal conduct with being dishonest and falsifying information on my Electronic Questionnaires for Investigations Processing (e-QIP) back in 2013 is unacceptable. I am embarrassed of my behavior and regret continuing to misuse illegal drugs especially while holding a security clearance. While continuing my background investigation during my polygraph test, I felt a lot of guilt for falsifying information. I confessed to the investigator that I had misused illegal drugs. I knew that my dishonesty would likely affect my clearance investigation, but I felt relieved the truth was out. I truly regret my attempts to conceal my past conduct as I noted above I am very embarrassed and ashamed. (Item 1)

Applicant disclosed in a September 2017 SCA that she used marijuana from approximately 1993 to March 2016. She smoked it; ate it in brownies; and inhaled it as second hand smoke when her husband was using it. She estimated from 1993 to 1997 she used it once biweekly; from 1998 to 2001, she used it about three times a week; from 2002 to 2005, she did not use marijuana; from 2006 to 2013, she did not use it more than three times a week; and from 2013 to 2016, she used it not more than twice a week or sometimes not at all. She did not use illegal drugs from 2002 to 2005, because she was applying for jobs, like the one she currently has, with a defense contractor.

Applicant also disclosed that from 1999 to 2013 with varying frequency, she used hallucinogenic mushrooms. She used Ecstasy, from July 2001 to February 2016, with varying frequency.

In her 2017 SCA, SOR answer, and response to the FORM, Applicant stated she does not intend to use drugs in the future because they are illegal, and they could impact her career and security clearance. (Items 1, 3, 4; AE A)

Applicant was interviewed by a government investigator in September 2018. She told the investigator that she used marijuana by herself, with her husband in their home, and occasionally with friends. The second hand marijuana smoke she inhaled was from her husband smoking marijuana in her presence in their home. Her husband also provided her drugs. She did not purchase illegal drugs. She told the investigator that she did not disclose her drug use on her earlier SCA because she feared the repercussions from her usage and that it would affect her reputation negatively. During an interview prior to a polygraph, she said she felt guilty for providing false information and confessed to her past illegal drug use (Items 1, 4).

Applicant told the government investigator that her spouse continues to use illegal drugs, but has agreed to not use them in her presence or talk about illegal drugs with her. She said her behavior is separate and independent of her husband's conduct. She said her drug use has had no negative physical effects on her and no effects on her personal life or finances. It has had no negative effects on her ability to do her job or safeguard information. She only used the drugs during personal time and not on the job. (Item 3)

In Applicant's FORM response, she stated:

[M]any of the individuals that were around during the drug use, I no longer associate with as there was a realization that these contacts were not going to help improve my life or support my personal growth. It was better to avoid them and focus on more important things in my life such as family and true close friends. I fully understand that illegal drug use has only hindered me and has affected my professional career by causing me to lose my security clearance. The stress of this adjudication process has made me regret my past actions, and I intend to abstain from all drug involvement and substance misuse. (AE A)

Applicant provided her performance ratings from 2008 to 2018. They are: meets requirements; exceeds requirements; highly effective contribution; and exceptional contribution. (AE A)

Policies

When evaluating an applicant's suitability for national security eligibility, 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 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;
- (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 a sensitive position.

Applicant illegally possessed and used marijuana with varying frequency from 1993 to 2016. She illegally possessed and used Ecstasy with varying frequency from July 2001 to approximately February 2016. She illegally possessed and used hallucinogenic mushrooms from April 1999 to approximately January 2013. She held a security clearance from November 2013 to March 2016. 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;
- (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; and
- (d) satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements,

without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Applicant was a frequent drug abuser from 1993 to 2016. She stopped using illegal drugs for a period when she was applying for a job, which indicates she was aware of the prohibition. She acknowledged her drug use, and disclosed it to the investigator prior to a polygraph. She said she does not intend to use illegal drugs in the future. She was put on notice when she completed her 2013 SCA that illegal drugs were a security concern, but continued to use them. She had an opportunity at that time to stop using illegal drugs, especially after being granted a security clearance, but failed to do so. She used the drugs with her husband, whom she said supplied them to her. They used them in their house. He continues to use illegal drugs. She continues to live with her husband whom she says will not use illegal drugs in front of her. I do not find that statement convincing. Applicant has been hiding her drug use for many years. I find it may recur and her conduct casts doubt on her current reliability, trustworthiness, and good judgment. There is no evidence she has had a drug evaluation or has participated in drug treatment. None of the above mitigating conditions apply.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(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 known, could affect the person's personal, professional, or community standing.

Applicant used using illegal drugs while holding a security clearance. She deliberately failed to disclose her extensive illegal drug abuse on her September 2013

SCA. Her drug use was cross-alleged under Guideline E, personal conduct. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(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 it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(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.

The evidence does not support the application of any of the mitigating conditions. The same analysis under Guideline H, drug involvement and substance misuse, applies under Guideline E, personal conduct. As Applicant stated in her answer to the SOR, she disclosed her past drug abuse during an interview by a government investigator prior to a polygraph. She had been using illegal drugs for years. She did not promptly correct her concealment and falsification, but rather based on it, she was granted a security clearance and then continued to use drugs. She continues to live with her husband, a known drug abuser, who supplied her with the illegal drugs. Her pattern of misconduct is not insignificant and casts serious doubts on her reliability, trustworthiness and good judgment.

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 Guidelines H and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant is 44 years old. She has an extensive history of using illegal drugs from 1993 to 2016. She used illegal drugs while holding a security clearance, which was granted in 2013 and based on a falsification in her SCA that she had not used drugs in the past seven years. This information was concealed until she was being interviewed as part of a polygraph. Applicant has not met her burden of persuasion. The record evidence leaves me with serious 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 security concerns arising under Guideline H, drug involvement and substance misuse, and Guideline E, personal conduct.

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
Subparagraphs 1.a-1.e:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 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 security to renew Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge