



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



In the matter of:)
)
) ISCR Case No. 18-02241
)
Applicant for Security Clearance)

Appearances

For Government: Eric C. Price, Esquire, Department Counsel
Tovah A. Minster, Deputy Chief Department Counsel
For Applicant: Daniel Meyer, Esquire.

04/01/2020

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case.¹ I grant Applicant's clearance.

On 12 October 2018, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising security concerns under Guideline H, Drug Involvement, and Guideline J, Criminal Conduct.² Applicant timely answered the SOR, requesting a hearing before the Defense Office of Hearings and Appeals (DOHA). DOHA assigned the

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-2, hearing exhibits (HE I-II, and Applicant exhibits (AE) A-H. AE H was admitted for the sole purpose of identifying AE A-G for the record. AE I was not admitted, but is included in the case file per the requirements of the Directive.

²DoD acted under Executive Order 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 Security Executive Agent Directive 4, effective on 8 June 2017.

case to me 26 February 2019, and I convened a hearing 20 March 2019. DOHA received the transcript 1 April 2019, and the record closed.

Findings of Fact

Applicant admitted the SOR allegations. She is a 34-year-old senior software engineer employed by a defense contractor since December 2012. She seeks to retain the clearance she was first issued in April 2009 (GE 1).

Applicant used several illegal drugs from about April 2004 to at least March 2015, a fact she disclosed on her June 2016 clearance application (SOR 1.a., 1.b., 1.c.) (GE 1). At the time, she stated that she used cocaine or crack cocaine and stimulants³ about twice a year between October 2008 and March 2015, when she got together with a long-distance friend, who provided the drugs; she also stated that she used marijuana about eight times per year with a long-distance friend who provided it, or with a sibling. Applicant stated that her marijuana use during this period was with her sisters when she was home on family visits. She used the marijuana to be sociable

During an October 2017 interview with a Government investigator (GE 2), she clarified that her cocaine and ecstasy use occurred at social gatherings, clubs, or raves. While she named the individual who provided the drugs, she also made it clear that the drug use was with a larger circle of friends. She stated that she used the drugs out of social pressure, but stopped because she realized that she was risking her job and her clearance. She acknowledged using these drugs at two different employers, while cleared (SOR 1.e.), and knew that there was a no-tolerance drug policy at one of them. Applicant also disclosed that she was arrested in June 2010 and charged with marijuana possession (SOR 1.d.), but was tried and acquitted in January 2011 (AE F).

However, Applicant was also interviewed by a Government investigator in February 2009, as part of an earlier background investigation (GE 2). She described using ecstasy once in April 2004, using cocaine twice—once in April 2007 and once in May 2008, using psychedelic mushrooms once in July 2007, and using cannabis about 88 times between June 2004 and June 2008. She used cannabis with her siblings and others. She stated that she bought cannabis about one-third of the times she used, and sometimes gave away or sold the drug to friends. She stated that she would not use cannabis again because of the risks to her job and clearance.

Applicant executed a statement of intent regarding future drug use as contemplated by the Directive (Answer, AE F). She underwent a drug screen in March 2019 that tested negative for six categories of illegal drugs (AE F).

Applicant acknowledged that her poor decisions reflect adversely on her judgment, but attributes them to her youth, some traumatic life experiences, and peer pressure.

³Amphetamines, speed, crystal meth-amphetamines, ecstasy, etc.

However, she notes that she no longer associates with the friend who previously supplied the drugs when they got together, and she has sharply reduced the number of times per year that she returns home for family events. And she absents herself from the gathering if any of her siblings produce marijuana.

Applicant's character references—a coworker and social acquaintance, her uncle, a long-time friend and former coworker, and an intermittent boyfriend (AE G)—consider her honest and trustworthy, and recommend her for her security clearance. None of them has seen any indication of illegal drug use, although they have seen the SOR allegations.

Policies

The AG list factors to evaluate a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also show a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(d). The applicability of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific guidelines should be followed when a case can be measured against them, as they are policy guidance governing the grant or denial of a clearance. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guidelines are Guideline H (Drug Involvement), and Guideline J (Criminal Conduct).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, an applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the required judgment, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels deciding any reasonable doubt about an Applicant's suitability for access in favor of the Government.⁴

Analysis

The Government established a case for disqualification under Guideline H, by demonstrating Applicant's illegal drug abuse between April 2004 and March 2015, and her illegal drug use after being granted a clearance in April 2009.⁵ However, Applicant

⁴See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵¶25(a) any substance misuse; (c) illegal possession of a controlled substance, including . . . purchase. . . ;

mitigated the security concerns. Applicant used illegal drugs in social settings for about 11 years, including for about six years after she was granted a clearance. Nevertheless, she has not used any illegal drugs for four years.

Drug involvement mitigating conditions give significant support to Applicant. Her illegal drug abuse was not recent, not frequent, and occurred under circumstances unlikely to recur.⁶ Applicant has distanced herself from friends and family with whom she used drugs. She has learned to walk away from family gatherings if illegal drugs are introduced. She has used no illegal drugs for four years. Finally, she has executed a statement of intent regarding future illegal drug use as contemplated by the guidelines.⁷ Under the circumstances, I conclude Applicant is unlikely to abuse illegal drugs in the future. Accordingly, I resolve Guideline H for Applicant.

The Government established a case for disqualification under Guideline J, but Applicant mitigated the security concerns. Applicant was acquitted of the June 2010 drug possession charge, and the Applicant's social use of cocaine, ecstasy, and marijuana lack security significance even under a disqualifying condition which contemplates a pattern of minor misconduct. None of the drug use resulted in charges, and it is a stretch to consider the drug use a course of criminal conduct. Nevertheless, in this case, even considering the drug use to be a course of criminal conduct does not raise any security concerns beyond those already considered under Guideline H.⁸ Moreover, even if I concluded that the disqualifying conditions were fully applicable, the corresponding mitigating conditions remove any security concerns.⁹ Applicant was acquitted of the single possession charge, none of the drug use was ever charged, and she has an

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

⁶¶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 [Emphasis supplied];

⁷¶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) 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;

⁸¶31.(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness.; . . .

⁹¶32.(a) so much time has elapsed since the criminal behavior happened . . . that it is unlikely to recur and does not cast doubt on the individuals' reliability, trustworthiness, or good judgment; (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

excellent employment record. Accordingly, I resolve Guideline J for Applicant.

Formal Findings

Paragraph 1. Guideline H:	For Applicant
Subparagraphs a-e:	For Applicant
Paragraph 2. Guideline J:	For Applicant
Subparagraph a:	For Applicant

Conclusion

Under the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

JOHN GRATTAN METZ, JR
Administrative Judge