



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 21-02363
)
Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*, Esq.

05/18/2022

Decision

MASON, Paul J., Administrative Judge:

Given Applicant’s increase of marijuana use to three to four times a week by November 2021, and her intention to use the drug in the future, she has not mitigated the security concerns raised by the guideline for drug involvement and substance abuse. Eligibility for classified information is denied.

Statement of Case

On March 16, 2021, Applicant certified and signed an Electronic Questionnaires for Investigations Processing (e-QIP) to obtain a security clearance required for employment with a defense contractor. On April 26, 2021, Applicant provided a personal subject interview (PSI) with an investigator of the Office of Personnel Management (OPM). After examining the background investigation, the Defense Counterintelligence Security Agency (DCSA) could not make the affirmative findings necessary to issue a security clearance. On December 7, 2021, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns under drug involvement and substance misuse (Guideline H). The action was taken under Executive Order (E.O.) 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, establishing in Appendix A the National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position (AGs), made effective in the DOD on June 8, 2017.

On February 24 2022, Applicant provided an answer to the SOR. Applicant decided to have her case decided administratively on the written record in lieu of a hearing. On March 1, 2022, the Government sent a copy of its File of Relevant Material (FORM), the Government's evidence in support of the allegations in the SOR, to Applicant. On page 2 of the FORM, the Government advised Applicant that although some states and other jurisdictions had decriminalized marijuana use, drug use remains illegal under federal law and is antithetical to holding a security clearance. (See, Security Executive Agent Clarifying Guidance Concerning Marijuana for Agencies Conducting Adjudications of Persons Proposed for Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position, ES 2021-01529). Applicant received the FORM on March 7, 2022. The FORM recommended she file objections, submit additional information or provide explanations within 30 days of receiving the FORM. Applicant's response was due on April 6, 2022. DOHA received no response. I was assigned the case on May 13, 2022.

Findings of Fact

The SOR contains one allegation that Applicant used marijuana from January 2012 to November 2021. (Answer to SOR) In her February 14, 2022 answer, she admitted the allegation, but contended that since 2016, she only uses the drug clinically for anxiety or depression, not recreationally. She noted that the drug has been decriminalized in the jurisdiction where she lives. She indicated that her future use would be as needed.

Applicant is 25 years old and single with a four-year-old son. She attended college between 2014 and 2016, and 2017 to the present, but received no degree. She is currently being sponsored by a defense contractor, and has been working as a community support worker since March 2020. She was unemployed from August 2019 to March 2020. She was employed in three restaurant positions between November 2017 and August 2019. (Item 2 at 10-22)

In her March 2021 e-QIP, Applicant disclosed that she used marijuana. (Item 2) Her reason for use was anxiety and depression. Although she was not formally diagnosed by a doctor, she discussed her use with her mental health practitioner. She noted that her first use was in 2012. Her most recent use was in March 2021. She indicated that, "I have not used marijuana consistently since 2011 (she probably meant to state 2012 because she identified her first use as 2012). She noted, "However[,] since the beginning of 2020, I have used it on an as needed basis." (Item 2 at 34) She

indicated that she did not intend to use marijuana in the future. Instead, after her discussions with her mental health practitioner of alternative methods of easing anxiety, she intended to use medication, writing, and gaming to relieve her anxiety. Applicant never sought treatment for marijuana use. (Item 2 at 33-35)

In her April 26, 2021 PSI with the OPM investigator, Applicant stated she was using marijuana three times a week, but, less than two months after she submitted her e-QIP, she could not recall when she first started using the drug. She noted that she was purchasing about seven grams of the drug as needed. In her November 23, 2021 interrogatory answers, she claimed her first use was in January 2019 and her last use was in November 2021. She described her marijuana use as occurring three to four times a week. Her future intentions were to use marijuana to reduce stress, but she would discontinue use if required. On November 23, 2021, Applicant indicated that her interrogatory answers were accurate. On November 29, 2021, she confirmed that the April 2021 PSI accurately reflected the discussions she had with the investigator. Applicant chose not to respond to the FORM. (Item 3 at 1-8)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines, which should be applied with common sense and the general factors of the whole-person concept. All available, reliable information about the person, past and present, favorable and unfavorable, should be carefully reviewed before rendering a decision. The protection of the national security is the paramount consideration. AG ¶ 2(d) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." 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 in seeking a favorable security decision.

Analysis

Drug Involvement and Substance Misuse

The security concern under the Drug Involvement/Substance Abuse Guideline is set forth 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. *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.

AG ¶ 25. Conditions that could raise a security concern and may be disqualifying include:

- (a) any substance misuse (see above definition); and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution, or possession of drug paraphernalia; and
- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue use.

Applicant furnished several explanations of her marijuana use since 2012. In her March 2021 e-QIP, she disclosed that her first use of the drug was in 2012. Her reason for use was anxiety and depression. Although she was not formally diagnosed by a doctor, she discussed her use with her mental health practitioner. Her discussions with her doctor do not excuse her violation of federal law. She indicated that, "I have not used marijuana consistently since 2011 (she probably meant to state 2012 because she identified her first use in the e-QIP as 2012). She noted, "However[,] since the beginning of 2020, I have used it on an as needed basis." (Item 2 at 34) After discussing alternative methods of easing anxiety with her mental health practitioner, her future intention was to use medication, writing, and gaming, rather than marijuana. Applicant never received drug treatment.

Less than two months later in her April 26, 2021 PSI with the OPM investigator, Applicant apparently changed her mind and decided to continue using marijuana to relieve her anxiety rather than meditation, writing, and gaming. She stated she was using marijuana three times a week, but she could not recall when she first started using the drug. In her November 23, 2021 interrogatory answers, she claimed her first use was in January 2019 and her last use was in November 2021. She described her marijuana use as occurring three to four times a week. Her future intentions were to use marijuana to reduce stress, but she would discontinue use if required.

In her February 14, 2022 answer to the SOR, Applicant contended that since 2016, she has only used the drug clinically for anxiety or depression, not recreationally. She noted that the drug has been decriminalized in the jurisdiction where she lives. She indicated that her future use would be as needed. In summary, Applicant's use and possession of marijuana falls within the purview of AG ¶¶ 25(a) and 25(c). Her statements of intention to use marijuana in the future satisfy AG ¶ 25(g).

AG ¶ 26. Conditions that could mitigate security concerns include:

(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.

Applicant has provided inconsistent explanations of her marijuana use since 2012. These conflicting accounts undermine her overall credibility and raise a reasonable inference that she is using marijuana more than she describes. She intends to use the drug in the future to medicate her anxiety and depression. She did not reply to the FORM. There is no evidence she stopped using marijuana or that she has made the necessary lifestyle changes to maximize the chances of abstinence from marijuana in the future. Applicant has not mitigated the drug involvement and substance abuse security concerns.

Whole-Person Concept

I have examined the evidence under the guideline for drug involvement/substance misuse in the context of the nine general factors of the whole-person concept 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 access to classified information must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept. The safeguarding of classified information, together with complying with security regulations and the federal law, is an around-the-clock responsibility that does not end when an applicant leaves work at the end of a work day, or when she is at home or on vacation.

Applicant was placed on notice that her marijuana use was becoming a security concern to the Government by the time she furnished her interrogatory answers in November 2021. Rather than stating that she would forego future marijuana use, she provided a conditional response which indicated she would continue to use unless required to stop. That intention describing future use, coupled with her regular use of the drug in recent years, disqualifies Applicant from security clearance eligibility.

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:	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 interests of the United States to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge