



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



In the matter of:)
)
) ISCR Case No. 19-03755
)
)
Applicant for Security Clearance)

Appearances

For Government: Raashid S. Williams, Department Counsel
For Applicant: Pro se

May 27, 2022

Decision

Lokey Anderson, Darlene D., Administrative Judge:

On September 21, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On September 28, 2020, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline I, Psychological Conditions, Guideline G, Alcohol Consumption, Guideline H, Drug Involvement and Substance Misuse, and Guideline E, Personal Conduct. The action was taken 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 the adjudicative guidelines (AG) effective within the DoD for SORs issued after September 1, 2006.

Applicant answered the SOR on a date uncertain. She requested that her case be decided by an administrative judge on the written record without a hearing. (Item 2.) On September 30, 2021, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing five exhibits, was sent to the Applicant and received on October 14, 2021. The FORM notified Applicant that she had an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant responded to the FORM, which was admitted into evidence without objection and marked as Applicant's Exhibit A. DOHA assigned the case to me on March 1, 2022. Items 1 through 5 were admitted into evidence, and are hereinafter referred to as Government Exhibits 1 through 5.

Findings of Fact

Applicant is 33 years old. She is not married and has no children. She has a Bachelor's degree. Applicant holds a full time position with a defense contractor as a Software Engineer. She is seeking to obtain a security clearance in connection with this employment. The SOR alleges security concerns under three of the following four guidelines:

Guideline I – Psychological Condition: The Government alleges that Applicant has an emotional, mental, and personality condition that can impair judgment, reliability, or trustworthiness. Applicant denies the allegation set forth under this allegation.

Guideline G – Alcohol Consumption: The Government alleges that Applicant engages in excessive alcohol consumption that can lead to the exercise of questionable judgment or the failure to control impulses, and can raise questions about her reliability and trustworthiness. The SOR refers to allegation 1.b., which does not exist. Accordingly, there is no finding for or against the Applicant under this guideline.

Guideline H - Drug Involvement and Substance Misuse: The Government alleges that 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 admits with explanation the allegations set forth in 3.a., and 3.b. The SOR refers to allegation 3.c., which does not exist. Accordingly, there is no finding for or against the Applicant for 3.c.

Guideline E – Personal Conduct: The Government alleges that Applicant has engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that can raise questions about her reliability, trustworthiness, and ability to protect classified or sensitive information. The Applicant admits with explanation the allegations set forth under this guideline.

Applicant began working for her current employer in March 2015. Applicant completed a security clearance application dated September 21, 2016. In response to questions in Section 23, Applicant was asked. "In the last seven years, have you illegally used any drugs or controlled substances?" The Applicant answered, "NO." Applicant deliberately failed to disclose that she used marijuana with varying frequency from about high school to at least 2015. She also failed to list her use of ecstasy in 2018, while granted a security clearance. Furthermore, Applicant did not report to her facility security officer that she used ecstasy in 2018 as required by DoD policy and procedure. During her interview with an investigator from OPM on August 21, 2018,

Applicant was asked why she did not tell the truth about her illegal drug use on her security clearance application. Applicant stated that she was afraid of losing her security clearance. (Government Exhibit 4.)

In regard to the use of illegal drugs, Applicant initially stated that she has never used any illegal drugs. (Government Exhibit 4.) She later admitted that she used marijuana in high school; about once a week for the last few months of her senior year. Then, in college her use of marijuana continued until she quit, during the second semester. Applicant did not use marijuana again until 2015, when she visited Colorado on two separate occasions. While in Colorado, Applicant smoked marijuana and ate marijuana gummy bears one or two times on each trip. Applicant decided to use marijuana since it was legal in Colorado, and because she was on vacation. The marijuana made her feel loopy, lazy, and dumb. Applicant stated that the effects of the gummy bears lasted longer than when she would smoke marijuana. Applicant states that she no longer uses marijuana. (Answer to SOR.) Applicant also admitted that in 2018, she used ecstasy at a music festival in Ireland with a friend. She stated that a stranger offered it to her and she tried it. (Government Exhibit 4.)

Applicant also stated that since April 2017, she has been seeing a mental health counselor for general anxiety and depression. Her therapy has continued on a weekly basis since then. (Government Exhibit 4.)

In September 2019, Applicant was referred for a psychological evaluation in relation to her security clearance application. (Government Exhibit 5.) During the evaluation, Applicant discussed her difficulty managing her alcohol consumption, and how she has used alcohol to cope with stressors and stressful situations. Applicant stated that her work with her therapist “focuses on curtailing her drinking.” In describing her drinking pattern, Applicant stated that she currently does not drink during the work week, but drinks wine on Friday and Saturdays. She has never had a period of drinking daily, but has “binged” in social situations. She does not know if she has been formally diagnosed with depression and anxiety, but she reported that she is sad and anxious. The last time she drank more than she wanted to was October 28, 2019. She reported that she had three beers. Prior to that she drank too much around Valentines day while on a ski trip. She consumed about three seltzers and whiskey (about 5-6 drinks). She does not remember everything from that night, but knows that she had too much to drink. She states that she currently drinks heavily every couple of months while at home. During those times, she has said things to her roommate that she does not want to say, and has done things she does not want to do. For about a two-month period in 2017, she stopped drinking alcohol, and found that she experienced increased energy and motivation. She then returned to her regular drinking pattern. Applicant has never attended Alcoholics Anonymous or any rehabilitation program for her alcohol problem. (Government Exhibit 5.)

Applicant explained that in social situations, she becomes very anxious. At least once a month she has to leave work early because of her emotions. Applicant admitted that her alcohol consumption has helped her connect with people, but also acknowledged that it has made things worse for her most of the time. (Government

Exhibit 5.) Applicant believes that she has control over her alcohol consumption since she tries to follow moderation management. (Answer to SOR.)

During the evaluation, Applicant discussed her struggle with Attention Deficit Hyperactivity Disorder, reflected by an ongoing pattern of impulsivity and poor decision making. For about a year, Applicant has been taking a medication prescribed by her primary care physician for her attention deficit related difficulties. Applicant explained that she was having difficulty accomplishing anything at work, and felt like she was not quite hearing what people were talking to her about. She feels that she does not listen well and felt overwhelmed. She feels that overall, the medication has helped her, but it can make her feel sick and anxious in the mornings. (Government Exhibit 5.)

The psychologist stated that Applicant's above-described conditions have led to episodes of poor judgment and failure to consider her behavior and decisions in the face of her obligations related to her security clearance. Her poor decisions can place her in unsafe situations that could make her a target for blackmail or at risk of coercion, particularly when she is drinking heavily. She is unable to stop drinking altogether and says things she wishes she did not say to her roommate when she is home drinking on the weekends. Her alcohol use places her judgment and reliability at risk as she has placed herself in dangerous situations when drunk or impaired by alcohol, and later reports that she cannot report the details. (Government Exhibit 5.)

Applicant was diagnosed with Generalized Anxiety Disorder, Major Depressive Disorder and Alcohol Use Disorder, Moderate. The psychologist concluded that Applicant's overall prognosis is poor. She continues to struggle to eliminate episodes of heavy drinking, continues to experience impairing levels of depression and anxiety, and appears insufficiently motivated to put the requirements of her security clearance before her own desires, even when recognizing the possible security concerns of her actions. It is also noted that given her ongoing pattern of alcohol use, her ongoing symptoms of depression and anxiety, as well as her impulsive decision making, her judgment, reliability and trustworthiness appear impaired which impacts her capacity to properly safeguard classified information. (Government Exhibit 5.)

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. 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. 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.” The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 the 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 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 I: Psychological Conditions

The security concern relating to the guideline for Psychological Conditions is set out in AG ¶ 27:

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g., clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and

mitigating information under this guideline and an opinion, including prognosis, should be sought. No negative inference concerning the standards in this guideline may be raised solely on the basis of mental health counseling.

The guideline at AG ¶ 28 contains five conditions that could raise a security concern and may be disqualifying. Two conditions are strongly established in this case:

- (a) behavior that casts doubt on an individual's judgment, stability, reliability, or trustworthiness, not covered under any other guideline and that may indicate an emotional, mental, or personality condition, including, but not limited to, irresponsible, violent, self-harm, suicidal, paranoid, manipulative, impulsive, chronic lying, deceitful, exploitative, or bizarre behaviors; and
- (b) an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability or trustworthiness;

The guideline at AG ¶ 29 contains five conditions that could mitigate security concerns:

- (a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;
- (c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;
- (d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; and
- (e) there is no indication of a current problem.

None of the mitigating conditions apply. Applicant has mental health conditions that have affected her judgment, reliability, and trustworthiness for some time, and continue to affect her. There is no indication that her mental-health conditions are under control or in remission. In fact, her prognosis is poor. Applicant's unfavorable

prognosis from a Government-approved psychologist substantiates this finding. The Psychological Conditions guideline is found against Appellant.

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 a sensitive position.

Applicant used marijuana for many years knowing it to be against the law. Most recently, she used it while in possession of a security clearance. This conduct raises serious questions about her reliability and trustworthiness.

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 are applicable. Applicant used marijuana for many years, and while possessing a security clearance. The use of marijuana is in violation of Federal law. It is also against DoD policies. Applicant is prohibited from using marijuana while holding a security clearance. Her conduct shows poor judgment, unreliability and untrustworthiness.

Guideline E- Personal Conduct

The security concern for Personal Conduct is set out in AG ¶ 15:

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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. Two are potentially applicable in this case:

- (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 national security eligibility or trustworthiness, or award fiduciary responsibilities; and
- (b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative.

Applicant deliberately concealed her illegal drug on her security clearance application dated September 21, 2016. This conduct raises serious questions about her reliability and trustworthiness.

The guideline at AG ¶ 17 contains conditions that could mitigate security concerns. One of the conditions is potentially applicable:

- (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.

Applicant stated that she was afraid to reveal her past drug use in fear that she would lose her security clearance. Her conduct shows poor judgment, unreliability and untrustworthiness.

Considered in totality, Applicant's conduct precludes a finding of good judgment, reliability, and/or the ability to abide by rules and regulations. To be entrusted with the privilege of holding a security clearance, applicants are expected to abide by all laws, regulations and policies that apply to them. Applicant has chosen to live her life to her convenience, and has disregarded the law. Knowing that the use of marijuana is illegal, and then to lie on the security clearance application about it is unacceptable. Under the particular facts of this case, Applicant does not show the requisite character or judgment of someone with maturity, integrity, reliability and stability necessary to access classified information. At this time, Applicant does not meet the qualifications for a security clearance.

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 Guidelines I, G, H, and E in my whole-person analysis. An individual who holds a

security clearance is expected to comply with the law at all times. Applicant has not demonstrated the level of maturity and mental stability needed to access classified information. Her credibility is in question. Furthermore, Applicant understands the requirements associated with holding a position of trust and knows that illegal drug use is not tolerated by the Department of Defense. Applicant is not an individual in whom the Government can be confident to know that she will always follow rules and regulations and do the right thing, even when no one is looking. Applicant does not meet the qualifications for a security clearance.

Overall, the record evidence leaves me with 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 Psychological Conditions, Drug Involvement and Substance Misuse, and Personal Conduct security concerns. As stated, I make no finding concerning the Alcohol Consumption guideline.

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 I:	AGAINST APPLICANT
Subparagraph 1.a	Against Applicant
Paragraph 2, Guideline G:	NO FINDING
Paragraph 3, Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b	Against Applicant
Paragraph 4, Guideline E:	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 interest to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge