



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



In the matter of:)	
)	
-----)	ISCR Case No. 20-03667
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole A. Smith, Esquire, Department Counsel

For Applicant: *Pro se*

September 12, 2022

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted her initial Electronic Questionnaires for Investigations Processing (e-QIP) on April 17, 2019. (Item 3.) On April 19, 2021, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines H (Drug Involvement and Substance Misuse), E (Personal Conduct), F (Financial Considerations), and M (Use of Information Technology). (Item 1.) The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines effective within the Department of Defense after June 8, 2017.

Applicant answered the SOR in writing (Answer) on May 7, and June 14, 2021, with explanations and six enclosures. She requested her case be decided on the written record in lieu of a hearing. (Item 2.) On November 26, 2021, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 to 4, was provided to Applicant, who received the file on November 30, 2021.

In the FORM Department Counsel stated that the Government withdrew Paragraphs 3 and 4 of the SOR and all subparagraphs under them. Accordingly, no finding is made as to those paragraphs.

Applicant was given 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted additional information on December 28, 2021. Department Counsel had no objection to the admission of the additional information, and it is admitted into evidence as Applicant Exhibit A. The case was assigned me on March 1, 2022. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is denied.

Findings of Fact

Applicant is a 38-year-old administrative clerk with a defense contractor. She is single and has two children. She is a high school graduate. She is seeking to obtain national security eligibility in connection with her work with DoD.

Paragraph 1 (Guideline H – Drug Involvement and Substance Misuse)

The Government alleges in this paragraph that Applicant is ineligible for clearance because she has used illegal drugs. Applicant admitted both allegations under this paragraph with explanations.

1.a. Applicant admitted using marijuana from about 2007 through September 2017. She used marijuana with varying frequencies during that time, at one point using marijuana three times a week (2013-2015). She stated that the use was encouraged by her then-boyfriend, who was an avid marijuana user. In her Answer she stated, "I am no longer involved with those persons and have since stopped using marijuana and started focusing on my career and my children." (Item 2 at 3.)

In Applicant Exhibit A she further stated, "During the time that I was engaging in questionable activities, I was in a dark place in my life. I was around people who were not good influences and I was in a toxic and abusive relationship. Since leaving that relationship, I have cut ties with all of those people and no longer associate with anyone from that part of my life."

1.b. Applicant admitted that she tested positive for marijuana in January 2015 during a drug test administered by her then-employer (Company One). This incident is further discussed under subparagraphs 2.a and 2.b, below.

Applicant stated in Applicant Exhibit A, "Please note that in September of 2020, a new company took over my contract. As a part of their company policy, I was administered an initial drug test, which I passed and am subject to random testing at any time." She included a copy of her employer's Drug/Alcohol Workplace Policy as an attachment to Applicant Exhibit A.

Paragraph 2 (Guideline E – Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because she has engaged in conduct that shows poor judgment, untrustworthiness or unreliability. She admitted allegations 2.a through 2.e under this paragraph with explanations.

2.a. Applicant admitted that she was involuntarily separated from Company One as a result of the positive drug test set forth under subparagraph 1.a, above.

2.b Applicant filled out an e-QIP in April 2019. (Item 3.) Section 13A of the questionnaire asked Applicant about her employment history, including with Company One. She admitted working there from January 2013 to February 2015. She stated that the reason for leaving the company was, "Acquired new employment."

The questionnaire also asked Applicant whether during her employment with Company One "any of the following happened to you **in the last seven (7) years?** Fired/Quit after being told you would be fired/Left by mutual agreement following charges or allegations of misconduct/Left by mutual agreement following notice of unsatisfactory performance." (Emphasis in original) Applicant answered, "No." These were false answers to relevant questions about Applicant's prior employment history with Company One.

Applicant stated in Item 2 at 3:

I was being drug tested for a new position in the company [Company One]. I was aware that I would not pass the test so while waiting for the results I found employment elsewhere. After being informed of the results by the company that conducted the test, I informed my manager at the time of the results and he informed my district manager who happened to be visiting the store that day. I was effectively sent home that afternoon and was later contacted by HR for the company. By that point, I had a tentative start date for my new employer and did not return their call.

2.c. Section 23 of the same questionnaire asked Applicant about her drug use history. Specifically, Applicant was asked whether she had used controlled substances during the previous seven years. Applicant stated, "No." This statement was false in that Applicant had actually used marijuana between 2007 and 2017, as set forth above.

2.d. Applicant was interviewed on July 17, 2019, by an authorized investigator for the Department of Defense. (Item 4.) During that interview Applicant stated that she had left her employment with Company One because the daily commute was too long for her.

Applicant was re-interviewed on August 5, 2019. She initially restated that she voluntarily left that employment. It was only after being confronted by the investigator with the facts of her positive drug test that she admitted being sent home after she told her manager of the positive drug test.

The Report of Investigation also stated:

Subject [Applicant] stated that she did not list this information in her case papers or bring it up during her interview because she did not view her separation from [Company One] as a termination. Subject stated that she was never told she was terminated and never signed any paperwork showing she had been terminated. Subject viewed her separation from [Company One] as her leaving for another employment opportunity. Subject claimed that she was not attempting to conceal or falsify this information in any way. (Item 4 at 4-5.)

2.e. During the same July 17, 2019 interview Applicant verified that her answers on the April 17, 2019 e-QIP to questions concerning drug use were correct. She was re-interviewed on August 5, 2019. When confronted concerning her drug use history Applicant admitted making a false statement in the earlier interview "due to believing that a positive response to drug questions could hurt her possibility of gaining employment." (Item 4 at 5.)

Regarding all the falsification allegations Applicant stated, "I admit that I did falsify material facts on my e-QIP and during my interview regarding my drug use. I was afraid that admission of these facts would hinder my chances of getting the job, which I greatly needed," (Item 2 at 3.)

Applicant stated the following in Applicant Exhibit A. "Working with the military has given me a new perspective of the terms "Honor, Courage and Commitment" and what it means to serve our nation. I now know that honor means being held accountable for my personal behavior and, taking responsibility for my actions and being honest and truthful."

Mitigation

Applicant submitted a letter from her supervisor. The supervisor stated, "She [Applicant] has been, honest, very responsible, hardworking, prompt, highly reliable, and dedicated to our mission." (Item 2 at Enclosure 5.)

A co-worker of Applicant's, who has worked with her for two years, wrote in a letter that, "She [Applicant] is dedicated, punctual, and has the best work ethic of anyone I have met in a long time." She also stated, "Although [Applicant] has made some poor choices in her past, she has learned from her mistakes and has excelled in her current position." (Item 2 at Enclosure 6.)

Policies

When evaluating an applicant's national security eligibility for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 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 applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 (Guideline H – Drug Involvement and Substance Misuse)

The security concern relating to Drug Involvement and Substance Misuse 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. (Emphasis in original.)

I have examined the disqualifying conditions under AG ¶ 25 and especially considered the following:

- (a) any substance misuse (see above definition); and
- (b) testing positive for any illegal drug.

Applicant used marijuana on an occasionally frequent basis from 2007 to 2017. She tested positive for marijuana in 2015 while employed at Company One. All of the stated disqualifying conditions apply.

The following mitigating conditions under AG ¶ 26 have also been considered:

(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 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 used marijuana for about ten years, occasionally frequently, ending five years ago. This use was in the context of an abusive relationship with a boyfriend who was an avid marijuana user. Applicant has now left the relationship, has a good job, has abstained from marijuana use, and evinced a credible intent not to use it in the future. I am viewing her signed Answer and signed Applicant Exhibit A as equivalent to a signed statement of intent. Viewed in the context of the whole person, Applicant has mitigated the security significance of her past drug use. Paragraph 1 is found for Applicant.

Paragraph 2 (Guideline E – Personal Conduct)

The security concern relating to the guideline 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. Three 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 knowingly falsified material facts about her drug use history, including the circumstances concerning her employment with Company One, on a Government personnel security questionnaire in 2019. She also falsified the same facts during an initial interview with an authorized DoD investigator. The cited disqualifying conditions apply.

The following mitigating conditions under AG ¶ 17 are possibly applicable to Applicant's conduct:

(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.

Applicant now admits that her conduct in falsifying relevant information on her questionnaire and in an initial interview was wrong and detrimental to her future and career. The positive statements from a co-worker and a supervisor have also been considered. However, the fact remains that only three years ago Applicant falsified her answers on a questionnaire and then repeated them to an investigator. It was only after being confronted with the fact that DoD knew the truth did she corroborate the information. None of the mitigating conditions apply. Paragraph 2 is found against Applicant.

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 national security 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 pertinent facts and circumstances surrounding this case. Applicant has mitigated her drug use. However, her falsifications are too recent in time to be mitigated based on the available record. She may well be eligible for a security clearance in the future, with a longer history of credible employment. Overall, the record evidence creates substantial doubt as to Applicant's present suitability for national security eligibility and a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	FOR APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a through 2.e:	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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS
Administrative Judge