



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



In the matter of:)	
)	
)	ISCR Case No. 22-00657
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey De Angelis, Esquire, Department Counsel
For Applicant: Alan V. Edmunds, Esquire Applicant’s Counsel

February 21, 2023

Decision

CEFOLA, Richard A., Administrative Judge:

On March 2, 2021, Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP). On June 1, 2022, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines H and E. 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 June 8, 2017.

Applicant answered the SOR in writing on June 23, 2022, which included Applicant Exhibits (AppXs) A through I, and requested a hearing before an administrative judge. Defense Office of Hearings and Appeals (DOHA) received the request soon thereafter. I received the case assignment on August 16, 2022. DOHA issued a Notice of Hearing on August 23, 2022, and I convened the hearing as scheduled on October 4, 2022. The Government offered Exhibits (GXs) 1 through 3, which were received without objection. Applicant testified and submitted AppXs J

through O. AppXs A through O were admitted without objection. She also asked that the record be kept open until October 11, 2022, for the receipt of additional documentation. On October 4, 2022, Applicant also submitted AppX P, which was admitted without objection. DOHA received the transcript of the hearing (TR) on October 13, 2022. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In her Answer to the SOR Applicant admitted the factual allegations in Paragraph 1 of the SOR, and denied the factual allegations in Paragraph 2 of the SOR, with explanations. She also provided additional information to support her request for eligibility for a security clearance.

Applicant is 30 years old, unmarried, and has no children. She works for a defense contractor. (TR at page 12 line 1 to page 13 line 6, and GX 1 at page 5.) Applicant was born and raised in State A until about May of 2016, when she moved to State B, where she presently resides. (GX 1 at pages 5, and 8~13.)

Guideline H – Drug Involvement

1.a. and 1.b. Applicant admits she used marijuana, with varying frequency from about 2008 until her last usage in March of 2021, more than a year prior to the issuance of the SOR. Applicant used it recreationally, but also to treat menstrual pains. Applicant admits that she used marijuana after being granted a security clearance in August of 2018. (TR at page 13 line 7 to page 16 line 14, and at page 21 line 22 to page 22 line 2.) She has submitted a Statement of Intent against future illegal drug usage, and has submitted three negative drug tests: June 2022, and two in September 2022. (AppXs A, B, J and P.)

Guideline E - Personal Conduct

2.a. Applicant answered, “No,” to “Section 23 – Illegal Use of Drugs . . . in the last (7) seven years” on her March 2021 e-QIP. (GX 2 at page 57.) Applicant avers, in part, that she did not know the use of marijuana was illegal. (TR at page 17 line 7 to page 18 line 21.) I find this to be a willful falsification as the use of marijuana is illegal under Federal law. Applicant argues that she thought that its use is legal in State B; but this argument holds little weight, as it was not legal in State A where she resided prior to May 2016.

2.b. Applicant answered, “No,” to “Section 23 – Illegal Use of Drugs . . . While Possessing a Security Clearance” on her March 2021 e-QIP. (GX 2 at page 57.) Applicant avers, in part, that she did not know the use of marijuana was illegal. (TR at page 18 line 22 to page 19 line 2.) I find this to be a willful falsification as the use of marijuana is illegal under Federal law.

2.c. Applicant also previously answered, “No,” to “Section 23 – Illegal Use of Drugs . . . in the last (7) seven years” on her February 2017 e-QIP. (GX 1 at page 45.) Applicant avers, in part, that she did not know the use of marijuana was illegal. (TR at page 19 lines 3~25.) I find this to be a willful falsification as the use of marijuana is illegal under Federal law. Applicant’s use of marijuana was not legal in State A where she resided prior to May 2016.

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 useful 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. According to AG ¶ 2(a), 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, an “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 access to classified information. 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 information.

Section 7 of Executive Order 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 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 seven conditions that could raise a security concern and may be disqualifying. Three conditions are established:

- (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.

Appellant used marijuana with varying frequencies from 2008~2021. She has held a security clearance in connection with her job since 2018. Therefore, AG ¶ 25 (a), (c), and (f) are established.

The guideline at AG ¶ 26 contains four conditions that could mitigate security concerns. Two conditions may be 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.

Applicant's last marijuana usage was two years prior to this writing, and 14 months prior to the issuance of the SOR. She has also provided a signed statement of intent to abstain from future drug involvement, and three negative drug tests. I find that her past marijuana usage is not of present security significance. Drug Involvement and Substance Misuse is found for Applicant.

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 following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

- (a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and
- (b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other

official representatives in connection with a personnel security or trustworthiness determination.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. One is 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.

Applicant falsified her 2017 and 2021 e-QIPs. The evidence is sufficient to raise the above disqualifying conditions.

AG ¶ 17 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 17 including:

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

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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.

None of these apply. Applicant falsified her e-QIP in 2017 as to her past drug involvement, and continued this ruse by falsifying her 2021 e-QIP. Personal Conduct 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 an 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.

AG ¶ 2(b) requires each case must be judged on its own merits. 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. Applicant performs her job well. (AppXs F and G.) However, overall, the record evidence leaves me without questions or 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 from her Personal Conduct.

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~2.c:	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.

Richard A. Cefola
Administrative Judge