



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:)
)
) ISCR Case No. 21-00827
)
Applicant for Security Clearance)
)

Appearances

For Government: Patricia Lynch-Epps, Esq., Department Counsel
For Applicant: I. Charles McCullough, III, Esq.
05/01/2023

Decision

MASON, Paul J., Administrative Judge:

Applicant has successfully mitigated the adverse security concerns raised by the drug involvement and personal conduct guidelines. Eligibility for classified information is granted.

Statement of Case

On August 23, 2019, Applicant certified and signed an Electronic Questionnaires for Investigations Processing (e-QIP) to obtain a security clearance required for employment with a defense contractor. She signed an earlier e-QIP on October 10, 2011, which was certified on November 9, 2011. On June 17, 2021, she provided responses to interrogatories, including a personal subject interview (PSI), dated April 1, 2020, provided to an investigator from the Office of Personnel Management (OPM). After examining the background investigation, the Defense Counterintelligence Security Agency (DCSA) Consolidated Adjudication Services (CAS) could not make the affirmative findings necessary to issue a security clearance. On July

21, 2021, DCSA CAS issued a Statement of Reasons (SOR) to Applicant detailing security concerns under drug involvement and substance misuse (Guideline H), and personal conduct (Guideline E). The DCSA CAS issued the SOR pursuant to DOD Directive 5220.6, *Defense Industrial Security Clearance Review Program* (January 2, 1992), and the adjudicative guidelines (AG) publicized in 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 August 9, 2021, Applicant provided an answer to the SOR. I was assigned the case on October 5, 2022. On January 6, 2023, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing for February 3, 2023. The Government's four exhibits (GE) 1-4 and Applicant's five exhibits (AE) 1-5 were admitted into evidence without objection. Following the hearing, Applicant submitted one post-hearing exhibit unopposed by the Government. The exhibit was admitted into evidence as AE 6. The record in this case closed when the transcript (Tr.) was received on February 13, 2023.

Findings of Fact

Applicant admitted the four allegations under the drug involvement guideline, and the three allegations under the personal conduct guideline, without explanations.

Applicant is 31 years old. She has been married to her second husband for two years. The couple have no children. She married her first husband in February 2016, and divorced him in March 2017. She has been working for her employer since January 2017. She began as a branch manager and currently is an engineering manager on the leadership team. She supervises 300 individuals. (GE 1 at 25; GE 3 at 6; Tr. 33-37)

From August 2006 to March 2010, Applicant attended a military academy and received a high school diploma in May 2010. She attended an aeronautics university from August 2010 to June 2014, where she earned a bachelor's degree. She received three work-related certificates in 2019, and a cash award in 2020. Her performance evaluations for 2018, 2019, and 2021 registered eight or higher on a one to ten rating system. In August 2021, she received a master's degree in science in unmanned systems. (GE 1 at 13-15; GE 3 at 5; Tr. 65-66; AE 1, 2, 3)

After graduating from the university in June 2014, Applicant was commissioned to the United States Army Reserve (USAR) as an officer. She was then assigned to United States (U.S.) duty locations while working civilian jobs. She went on active duty to Afghanistan from January 2016 to January 2017, when she returned to the United States and began working for her current employer. She remained in the USAR until July 2019, when she left by mutual agreement after unsatisfactory performance, though the record persuasively demonstrates there was nothing wrong with her performance. She never explained the nature of the unsatisfactory performance. She made reference to: (1) an incident during her deployment that she did not want to be recorded; (2) her

subsequent marijuana usage because of sleep problems; and (3) counseling she received from her chain-of-command in August 2018 because of her failed drug test in July 2018. (GE 1 at 17; GE 3 at 4-5; GE 4; Tr. 43)

Drug Involvement

SOR ¶ 1.a – In her August 2021 answer to the SOR, Applicant admitted that she initially used marijuana at varying frequencies from August 2009 to June 2014, and later purchased marijuana from January 2017 to August 2018. She began using marijuana in August 2009 sporadically in high school in social settings. Though she testified that she could not recall how many times she used the drug in high school, she estimated two times in her August 2019 e-QIP. She acquired the drug from her high school friends. (GE 1 at 37; GE 3 at 5; Tr. 62) There is no evidence indicating that she purchased the drug during this period.

In college from 2010 to June 2014, Applicant testified that she used marijuana sporadically. While she could not attach a number for the times she used the drug, in her August 2019 e-QIP, she estimated her use as “a handful of times in college.” She testified that she did not purchase the drug while in college. (GE 1 at 37-38; Tr. 41, 54, 63)

After graduating from the university in June 2014, and receiving her commission into the USAR, Applicant stopped using marijuana because she recognized the zero-tolerance policy against drug use in the U.S. Army (USA). Before receiving her commission, she tested positive for marijuana in June 2014. (GE 4 at 5; Tr. 41)

Applicant stated in her April 2020 PSI that she used marijuana two months after returning from her active-duty deployment in December 2016. Anxiety and post-traumatic stress syndrome (PTSD), two undiagnosed medical conditions that were related to Applicant’s foreign deployment which caused sleep problems, were the reasons that she resumed using marijuana. She justified drug use over alcohol use because of her father’s ongoing problems with alcohol; she rationalized marijuana use over treatment from a medical professional because of Applicant’s family’s risk of addiction. She smoked marijuana less than 12 times in 2017, and once a month in 2018 until June 2018 when she failed a drug test. She purchased the drug during this period. (GE 3 at 4-5; GE 4 at 5; Tr. 50-52, 54, 74) Applicant testified that after returning from foreign deployment, she did not resume marijuana use until June or July 2017, rather than January 2017. (Tr. 49-50) In her December 2019 e-QIP, she stated that she did not intend to use marijuana in the future because of her discharge from the military in July 2019 (SOR ¶ 2.b), which helped reduce her stress and sleep problems. (GE 1 at 37-38) In the same form, she admitted using marijuana while possessing a security clearance, but falsely denied purchasing marijuana in the previous 7 years. (GE 1 at 38) This falsification is not alleged in the SOR, but will be considered in the whole-person section of this decision.

SOR ¶ 1.b – Applicant admitted in her answer that between November 2011 and August 2018, she used and purchased marijuana while she was granted access to classified information. Though she had a security clearance during the entire period covered by SOR ¶ 1.b, she did not use or purchase marijuana between June 2014 to the middle of 2017. She claimed she did not know that she had a security clearance until she was receiving briefings in 2015 in advance of foreign deployment in early 2016. (Tr. 42) She also claimed that she did not know that the e-QIP she filled out in 2011 had a connection to her security clearance. She believed her security clearance was granted to her by virtue of her military status as an officer. (Tr. 42)

SOR ¶ 1.d – In June 2014, Applicant tested positive for marijuana based on a urinalysis test administered by Applicant's Army unit. She did not receive the results until 2018, when she took another urinalysis test. In the interim years, she registered negative results from seven urinalysis tests between June 2014 and June 2018. (GE 4 at 5; Tr. 43-44)

SOR ¶ 1.c – In June 2018, Applicant tested positive for marijuana based on a urinalysis test administered by her Army unit. (GE 4 at 5)

After Applicant's positive marijuana test in June 2018, she sought treatment from medical professionals, using her employer's assistance program. During five or six months of treatment, she learned different tactics to alleviate stress, such as physical fitness, medication techniques, and alternative communication practices. (Tr. 55-56, 78, 86-89)

In her testimony, Applicant stressed that she does not intend to resume marijuana use in the future. She has made positive changes in her lifestyle. She no longer associates with the person she purchased the marijuana from. She does not associate with any drug users or environments where drugs are used. She has provided a statement of intent to refrain from future drug use, recognizing that any future drug involvement is grounds for revocation of eligibility for security clearance eligibility. (AE 6) She and her husband plan to start a family. She is thriving in her career development. One aspect of Applicant's job is counseling her employees on career development and security issues. She emphasizes the importance of supplying truthful information on security forms. (Tr. 57-58, 81-82)

Personal Conduct

SOR ¶ 2.a – Applicant's illegal use of marijuana between August 2009 and 2014, and between the middle of 2017 to June 2018, while possessing a security clearance, demonstrates questionable judgment under the personal conduct guideline.

SOR ¶ 2.b – Applicant was administratively separated from USAR in July 2019 for misconduct, specifically drug use. (GE 3 at 5; AE 1-2) Applicant claimed that if she had told her commander that she intended to stay in the military, the commander was

willing to ensure that Applicant would not be administratively separated from the USAR. (Tr. 56-57, 76-77) In her undated character statement describing Applicant's remorse for her drug use and her good job performance, the commander indicated that "I would have fought to keep [Applicant] in the military if I could have." (AE 4 at 4) I find that Applicant was administratively separated from the USAR for her drug use. (GE 3 at 5; GE 4 at 1)

SOR ¶ 2.c – In her October 2011 e-QIP, Applicant was asked in Section 23 of the application if she had used illegal drugs in the last seven years. By answering "no" to the question, Applicant deliberately failed to disclose her marijuana use (SOR ¶ 1.a) that began on August 9, 2009. In her answer to the SOR, she admitted she falsified her answer to the question. (Tr. 63-65)

In 2010, when Applicant was 19 years old and applying for colleges, a military recruiter recommended that she not disclose her marijuana use since she aspired to be an officer in the military. (Tr. 38) In 2011 at age 20, after attending a Reserve Officer's Training Corps (ROTC) scholarship ceremony, she went into a conference room and, under the supervision of military recruiters, filled out different forms that she believed related to her ROTC scholarship and to join the military. She did not know that one of those forms was a security clearance application, but she did know that information that she put on 2011 security clearance application was incorrect. (Tr. 40) At the hearing, she indicated that she did not know she had a security clearance until she was receiving briefings in 2015 for foreign deployment in early 2016. (Tr. 42) Regardless of when Applicant became aware she had a security clearance, she knew in October 2011 that she deliberately concealed her marijuana use as set forth in SOR ¶ 1.a.

Character Evidence

Witness A, a project manager for Applicant's employer, has had a security clearance since late 2017. In the last five years, he has worked with Applicant in several locations. They have worked on several projects together. Witness A believes Applicant is honest and pleasant to work with. The adverse information in the SOR occurred many years ago and does not change Witness A's favorable opinion of Applicant. Though not fully aware of his employer's drug policy, he is aware that using illegal drugs while holding a security clearance could result in loss of the clearance. (Tr. 16-22)

Witness B works for Applicant's employer as a financial officer in the office of intelligence and analytics. He has had security clearance for 10 years. He has been working with her since 2018. Besides being trustworthy, Witness B praises Applicant's professional approach in evaluating a task from all angles before proceeding with a pragmatic solution. Witness B is not aware of his employer's drug policy, but believes that a person's drug use while holding security clearance must be evaluated on a case-by-case basis. (Tr. 23-33)

Applicant submitted four-character references. Reference C works as a scheduling supervisor for a distiller. In 2016, he served with Applicant in the Middle East where she was the officer in charge (OIC) of operations. In that position, Reference C watched Applicant develop a commendable reputation for organizational skills and problem-solving abilities. Reference C believes Applicant is security conscious. (AE 4 at C)

Reference D works for a defense contractor and has a security clearance. This reference has known Applicant for 13 years and met her in college. They were in separate branches of the military through the ROTC program. Reference D believes Applicant is reliable and merits a security clearance. (AE 4 at D)

Reference E, a program manager, has known Applicant since 2010 and considers her a role model who is very trustworthy. He recommends her for a security clearance. (AE 4 at E)

Reference F was Applicant's commander and is currently a major in the USA. Reference F relied on Applicant as OIC of the weapon ranges or as the training and planning officer. Based on Applicant's performance in all tasks she was assigned, and her security consciousness, Reference F recommends that she receive a security clearance. (AE 4 at F)

Reference G has been an employee of the intelligence and analytics division of Applicant's employer since 2012. Having worked with Applicant since 2018, reference G believes she exercises good judgment and trustworthiness. In his view she has earned security clearance eligibility. (AE 4 at G)

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);
- (b) testing positive for an illegal drug; and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution, or possession of drug paraphernalia.

Applicant began using marijuana in 2009. She used the drug until June 2014. When she returned from foreign deployment in the middle of 2017, she used and purchased the drug. Applicant's use triggers the application of AG ¶ 25(a). Her two positive drug tests in June 2014 and June 2018 for marijuana fall within the purview of AG ¶ 25(b). Her use of the drug involves illegal possession of a controlled substance as defined by AG ¶ 25(c).

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's illegal use of marijuana lasted from 2009 to June 2014, when she tested positive for the drug. Her infrequent to sporadic use of the drug was aggravated by the fact she had a clearance during the period. While Applicant exercised good judgment in discontinuing marijuana use in June 2014, she resumed using the drug between June or July 2017 to June 2018, when she tested positive for marijuana a second time. During this period, Applicant not only used marijuana more than sporadically, but she also purchased the drug. Overall, Applicant receives limited mitigation under AG ¶ 26(a) based on the absence of any drug use after June 2018.

In her October 2011 e-QIP (GE 2), Applicant concealed information about her marijuana use. Her youthful age and decision to intentionally lie on the Government form extenuates the seriousness of her decision, but does not excuse it. On the other hand, in April 2020, June 2021, and at the February 2023 hearing, Applicant furnished generally consistent information about her drug use over the years, and the measures she has taken to forego future marijuana use.

Applicant's four-year pattern of abstinence from marijuana and all other illegal drugs, is enhanced by her decision to sever her relationship with drug users and the environment that generates drug use. Her five months of treatment for stress helped her to develop tactics to control her stress. She and her husband have plans to increase their family. Her performance evaluations are good. Finally, she has signed a statement of intent to abstain from all drug involvement or face a revocation of her security clearance eligibility. All mitigating conditions of AG ¶ 26(b) apply.

Personal Conduct

AG ¶ 15 sets forth the security concerns related to personal conduct:

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:

AG ¶ 16. Conditions that could raise security concerns and may be disqualifying include:

(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

(c) credible adverse information in several adjudicative areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that she may not properly safeguard classified or sensitive information.

The allegations under SOR ¶ 1 are cross-alleged under SOR ¶ 2.a. Applicant's initial marijuana use while holding a security clearance, her subsequent drug use and purchase of the drug while holding a clearance, and testing positive for marijuana use on two occasions in 2014 and 2018, leading to her separation from the USAR in July 2019, reveals an unwillingness to comply with rules and regulations that show Applicant may not properly safeguard classified information. AG ¶ 16(c) applies.

Applicant's deliberate falsification of her marijuana use from her October 2011 e-QIP constitutes disqualifying conduct within the meaning of AG ¶ 16(a).

AG ¶ 17. Conditions that could mitigate security concerns include:

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

(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.

AG ¶ 17(a) does not apply because Applicant did not make a prompt, good-faith effort to correct the falsification. Any deliberate falsification during the course of a security investigation is serious. However, AG ¶ 17(c) is resolved in Applicant's favor because of the passage of about ten years since the falsification combined with the isolated nature of the falsification. AG ¶ 17(d) warrants full consideration in mitigation for the same reasons as discussed under AG ¶ 26(b). Applicant has incorporated effective coping techniques to handle her stress.

Whole-Person Concept

I have examined the evidence under the guideline for drug involvement and substance misuse, and personal conduct 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 evidence of Applicant's use and purchase of marijuana until June 2018, her use of the drug while holding a security clearance between 2011 and June 2018, her positive test results in June 2014 and June 2018, and her concealment of purchasing marijuana in the last seven years from her October 2019 e-QIP, weigh against her security clearance application.

Conversely, the evidence that supports Applicant's application for security clearance eligibility is more persuasive. Though she concealed the purchase of marijuana in October 2019, she has engaged in full disclosure of her marijuana history since. There is no evidence of any drug use after June 2018. Applicant participated in five months of treatment to learn and incorporate ways to handle her stress. Her performance ratings for 2018, 2019, and 2021 show that she has had a good job performance since 2018. Applicant's character evidence substantiates her performance ratings and her security clearance eligibility. Judging by the totality of the evidence, particularly the favorable character evidence from her colleagues and the individuals that served with her during her deployment in 2016, Applicant has overcome the

security concerns raised by the guideline for drug involvement and substance misuse, and personal conduct.

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:	FOR APPLICANT
Subparagraphs 1.a-1.d:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.c:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is 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 granted.

Paul J. Mason
Administrative Judge