



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



In the matter of:)	
)	
)	ISCR Case No. 22-01582
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicholas T. Temple, Department Counsel
For Applicant: Pro se

May 19, 2023

Decision

Lokey Anderson, Darlene D., Administrative Judge:

On October 25, 2021, and June 14, 2017, Applicant submitted security clearance applications (e-QIPS). (Items 3 and 4.) On September 2, 2022, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline E, Personal Conduct, and Guideline H, Drug Involvement and Substance Misuse. The action was taken under Executive Order 10865 (EO), *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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective within the DoD after June 8, 2017.

Applicant responded to the SOR (Answer) on November 15, 2022. (Item 2.) She requested that her case be decided by an administrative judge on the written record. Department Counsel submitted the Government’s written case on February 1, 2023. A complete copy of the File of Relevant Material (FORM), containing four Items was received by Applicant on February 14, 2023. She was afforded an opportunity to file

objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant submitted a response to the FORM dated February 20, 2023. DOHA assigned the case to me on April 3, 2023. Items 1 through 4 will hereinafter be referred to as Government Exhibits 1 through 4.

Findings of Fact

Applicant is 28 years old. She has a Bachelor's degree and is currently in graduate school. She holds the position of Senior Systems Engineer. She is seeking to obtain a security clearance in connection with her employment.

Guideline E – Personal Conduct

Guideline H - Drug Involvement and Substance Misuse

Applicant was employed with defense contractor A, from May 2017 to March 2019. During that employment, Applicant completed a security clearance dated June 14, 2017. Section 23 of the application, concerning Illegal drug use, asked, "In the last seven years have you illegally used any drugs or controlled substances?" and, "while possessing a security clearance have you ever illegally used or otherwise been involved with a drug or controlled substance while possessing a security clearance other than previously listed?" Applicant answered "No" to both questions. In December 2017, she was granted a security clearance. (Government Exhibit 4.)

Applicant began working for defense contractor B in September 2019, where she currently remains employed. On October 25, 2021, Applicant completed a second security clearance application. This time, in response to questions in Section 23, Applicant admitted that she had used marijuana within the past seven years, from June 2016 to June 2019. (Government Exhibit 3.) In her answer to the SOR, Applicant admitted that she used marijuana with varying frequency between June 2016 and June 2019. She also admitted to using marijuana with varying frequency from about December 2017 to about June 2019, while granted access to classified information. (Government Exhibit 2.)

Applicant also stated that her use of marijuana occurred while she was in college and between the time she was employed with defense contractor A and defense contractor B. She further stated that between those jobs, she worked for a non-cleared, non-government contractor company for about six months. She stated that her use of marijuana was minimal and that it was not a habit or regular occurrence. She stated that it has been several years since she has used marijuana, and she has no intentions of ever using it again. (Applicant's Response to the FORM.)

Applicant also stated that she never intended to mislead the Government on her June 2017 security clearance application. She explained that it was a mistake of youth and misunderstanding. When she initially filled out the security clearance application in June 2017, she thought the question only referred to hard core drug use and not marijuana use. She stated that when she filled out the second application, she knew

that the question referred to all illegal drug use including marijuana, and so to be honest and candid she admitted her use. (Applicant's Response to the FORM.)

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 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.

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 from June 2016 to June 2019 at times, while possessing a security clearance. Applicant stated that she is no longer using marijuana, and that she has no intentions of ever using it in the future. Her credibility is in question. Given the fact that she was not honest and truthful about her illegal drug use in the first place, her actions have not been mitigated.

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. 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.

The guideline at AG ¶ 17 contains conditions that could mitigate security concerns.

- (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 cause or significantly contributed to by advice of legal counsel or 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.

Applicant lied about her illegal drug use on her June 2017 security clearance application. She knew or should have known to follow the instructions on the application and answer the question honestly. She contends that she was a young and immature engineer at the time. However, this is no excuse for her misconduct. As a result of the false information she provided, she obtained a security clearance under false pretenses. Her lack of credibility gives the government no confidence that she will voluntarily comply with required rules and regulations imposed in order to properly protect classified information. To be eligible for access to classified information an individual must demonstrate sufficient maturity and responsibility, often requiring them to self-report their misconduct. Applicant's failure to disclose her marijuana use on her June 2017 security clearance application falls short of meeting the eligibility requirements for access to classified information, and clearly demonstrates dishonesty, unreliability, and untrustworthiness that is not tolerated by the defense department.

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 disregarded Federal law, knowing that the use of any illegal drug is against DoD policy. Under the particular facts of this case, Applicant does not show the requisite character or judgment of someone who has the maturity, integrity, and reliability necessary to access classified information. At this time, Applicant does not meet the eligibility 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 E and H 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 needed for access to classified information. She understands the requirements associated with holding a security clearance and knows that illegal drug use is not tolerated. Applicant is not an individual in whom the Government can be confident that she will always follow rules and regulations and do the right thing, even when no one is looking. At this time, 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 Personal Conduct and Drug Involvement and Substance Misuse security concerns.

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 E:

AGAINST APPLICANT

Subparagraphs 1.a

Against Applicant

Paragraph 2, Guideline H:

AGAINST APPLICANT

Subparagraphs 2.a and 2.b

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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge