



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



In the matter of:)	
)	
)	ISCR Case No. 22-02236
)	
Applicant for Security Clearance)	

Appearances

For Government:
Tara R. Karoian, Esquire, Department Counsel

For Applicant:
Pro se

June 12, 2023

Decision

GLENDON, John Bayard, Administrative Judge:

Applicant did not mitigate the security concerns raised under the Drug Involvement and Substance Abuse and the Personal Conduct adjudicative guidelines. Based upon a review of the pleadings, Applicant’s testimony, and the exhibits, national security eligibility is denied.

Statement of the Case

Applicant submitted her most recent Electronic Questionnaire for Investigations Processing on July 25, 2019 (2019 e-QIP). On November 18, 2022, 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) and 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 effective within DoD after June 8, 2017.

On December 8, 2022, Applicant responded the SOR (Answer) and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on March 21, 2023, and the case was assigned to me on March 28, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Microsoft TEAMS Video Teleconference Hearing on April 10, 2023, scheduling the case to be heard on May 3, 2023.

I convened the hearing as scheduled. Department Counsel presented Government Exhibits (GE) 1 through 5, which I admitted without objection. Applicant submitted 17 exhibits, marked as Applicant Exhibits (AE) A through Q and testified on her own behalf. DOHA received the transcript of the hearing (Tr.) on May 10, 2023. (Tr. at 11-15.)

Findings of Fact

Applicant is 58 years old and has been employed since November 2022 as a network engineer by her current security clearance sponsor, a DoD contractor. She earned an associate degree in 1996 and has taken additional college-level courses. She has been married and divorced three times and has two adult children. (Tr. at 20-22, 40-41; GE 1 at 7, 14-15, 24-27, 29-30; GE 2 at 7, 14-15, 24-27.)

Applicant was first granted a security clearance in 2006, which was renewed in 2016 following her submission of an Electronic Questionnaire for Investigations Processing on September 8, 2016 (2016 e-QIP). Applicant's submission of her 2019 e-QIP was in connection with her employer's request that she receive a Top Secret clearance, which was granted in 2020. A subsequent investigation was undertaken in response to her employer's request that Applicant receive eligibility for access to sensitive compartmented information (SCI). The SOR is based upon new facts about Applicant's past involvement with drugs uncovered during the SCI investigation and her failure to disclose her more recent use of marijuana on her 2016 e-QIP and her 2019 e-QIP. (Tr. at 9, 42; GE 1 at 47-48, 49-50; GE 2 at 36-37; GE 5.)

Paragraph 1 - Guideline H, Drug Involvement and Substance Misuse

The Government alleged in this paragraph that Applicant is ineligible for clearance because of her past drug involvement. Specifically, the SOR alleged that Applicant used marijuana on two occasions, December 2013 and May 2016, after having been granted access to classified information (SOR ¶ 1.a). In her Answer Applicant admitted the allegation under this guideline and wrote that, "I chose to use marijuana on these two occasions knowing that I was behaving in sharp contrast to my promise to the United States." She added, "There have been no other times I have used any controlled substance during any time while holding a clearance from 2006 until this day." (Answer.)

Applicant testified that prior to 1995 she had a 13-year history of being a drug abuser who smoked marijuana and used methamphetamine, almost daily. She also drank alcohol excessively. In 1988, she was involuntarily hospitalized due an incident involving excessive drinking of alcohol. In 1995 Applicant's co-habitant forced her to leave their residence because of her addictions. She went to live with her sister, who assisted Applicant in becoming sober. Applicant was successful and maintained sobriety for 17 years through her participation in Narcotics Anonymous (NA) and the help of her family. (Tr. at 24; GE 1 at 45-46; GE 3 at 6; GE 4 at 2.)

In 2012 Applicant started drinking alcohol again when she was working as a defense contractor on a remote location of a U.S territory. She testified that there was little or no support systems for someone with Applicant's history of addictions. She thought that there was no reason she could not drink alcohol like a "grown-up." Her consumption of alcohol developed into daily drinking to the point of intoxication. She also smoked marijuana on two occasions while granted access to classified information, as alleged in the SOR (see below). After four years, she left her job in the remote location and relocated to State 1. She wanted to stop drinking alcohol, but she found it was more difficult to do that in 2017 than it was the first time. She also started attending NA meetings again. In 2019, she found employment at a U.S. military base in State 2 and relocated to State 2 for her new job. Her drinking continued until May 2019. She finally found the support she needed to control her alcohol consumption. (Tr. at 23-27, 36-38; GE 3 at 6-7; GE 4 at 3.)

Applicant testified that the sister of her former boyfriend urged Applicant to smoke marijuana with her on two occasions, once in 2013 and again in 2016. Applicant made the choice of smoking marijuana on both occasions. Both instances occurred while Applicant was visiting her boyfriend on the mainland of the United States. She has not used any illegal drugs since 2016. (Answer; Tr. at 26-28, 39; GE 3 at 7, 9; GE 4 at 3.)

Paragraph 2 - Guideline E, Personal Conduct

The Government alleged in this paragraph of the SOR that Applicant is ineligible for a security clearance because she has engaged in conduct that involves questionable judgment, an unwillingness to follow rules and regulations, a lack of candor, and dishonesty. The DoD CAF alleged that Applicant falsified her answer to the question in Section 23 of the 2016 e-QIP about prior illegal drug use by failing to disclose her use of marijuana in 2013 (SOR ¶ 2.a). The SOR also alleged under this guideline that Applicant falsified her answer to the same question in Section 23 of the 2019 e-QIP by failing to disclose her uses of marijuana in 2013 and 2016 (SOR ¶ 2.b).

In her Answer Applicant admitted both allegations in paragraph 2 of the SOR. She wrote, "There is no justification I can give for these decisions to falsify my investigations. It was bad judgment, and I can expect nothing less than having my clearance revoked." She added:

I am proud to have the privilege of working for our military. I understand the responsibility that comes with that privilege and that I have broken the trust that the U.S. government had in me by making these false statements. I can assure you that I understand the consequences that our military personnel and our country could face due to questionable judgment. I can promise you that my judgment regarding any information that I have been privy to has never been in question. (Answer at 1.)

Applicant concluded her comments in her Answer by writing, "I want to assure the US Government of my sincere desire to repair the trust that has been given to me and that I will continue to be a good steward of that trust." (Answer at 1.)

At the hearing, Applicant admitted that she deliberately provided a false answer to the question in Section 23 of the 2016 e-QIP. She testified that she was scared to admit her use of marijuana in 2013 because it might make her ineligible to work for her government contractor. In addition, she was drinking alcohol to excess at the time and that clouded her judgment. At the time she completed her 2019 e-QIP, Applicant had stopped drinking alcohol. She again did not report her marijuana uses in 2013 and 2016 because she was again afraid of losing her job. At her initial background interview, she did not disclose her marijuana use in 2013 and 2016. An investigator interviewed Applicant's sister in January 2020, and the sister told the investigator about Applicant's difficult history with drugs and alcohol and her active participation in NA. (Tr. at 28-31; GE 3 at 4-6; GE 5.)

Applicant's sister advised Applicant that evening about the interview. Applicant realized that she had to tell the investigator the truth about her drug history and her use of marijuana in 2013 and 2016. She wrote the investigator an email the next morning and admitted to the investigator that she had lied in her interview by not disclosing her past drug use and her current involvement in NA. The SOR does not contain an allegation that she provided false information to the investigator. At the hearing, she insisted that she would never again place her own self-interest ahead of her national security responsibilities. She feels a particularly strong duty to be honest for the sake of our military members. (Tr. at 31-34; GE 5.)

Psychological Evaluation

The DoD CAF requested that Applicant submit to a psychological evaluation. The evaluation was conducted by a DoD psychologist in May 2021. He provided a report, dated June 8, 2021. In his report, the psychologist provided an even-handed prognosis in which he credited Applicant "for utilizing her resources and reportedly maintaining

sobriety for 17 years.” He also noted that “with the right combination of support, she appears to be able to successfully manage her addiction.” He commented, however, “that an absence or removal of some of her supports can cause her to fall back into using drugs or alcohol again, even after long periods of sobriety.” He believes that it cannot be known if [Applicant’s current] stability will be maintained or follow the patterns of the past. Significantly, he wrote that “the disclosure of [Applicant’s] marijuana use in 2013 and 2016 was not forthright and [was] only discovered by [an] offhand comment which raises concerns as to whether future reportable events will be brought forward with integrity.” The Psychologist believes that Applicant “has a condition which impairs her judgment, reliability, and trustworthiness and should be carefully considered.” (GE 4 at 5.)

Mitigation and Whole-Person Evidence

Applicant has worked for the U.S. military for the past 19 years and considers this work as the best experience of her career. She is a member of NA and attends meetings regularly. She believes she has a large support system that has helped her maintain her sobriety. (Tr. at 17, 34-35.)

Applicant sincerely expressed remorse for lying to the Government about her past. She admits she lied on her applications out of fear for losing her job. She recognizes that her skills are transferrable to the private sector, but she does not want to lose the opportunity to serve the U.S. military. (Tr. at 18-19.)

Prior to the hearing, Applicant submitted 17 character-reference letters. Eight reference letters from professional contacts praised Applicant’s responsibility and dependability. She maintains excellent security practices and can be relied upon to protect classified information. The writers also praise her personal qualities, particularly her work ethic, honesty, and interpersonal skills. (AE A through H.)

Applicant also submitted seven reference letters from personal contacts, who praised her reliability, integrity, and authenticity. Friends who know Applicant through their involvement with her in NA write that Applicant is deeply committed to maintaining her sobriety. (AE I through O.)

The last two reference letters were written by Applicant’s sister and Applicant’s adult daughter. Her sister praised Applicant for the progress she has made in her life after many difficult years struggling with drug addiction while raising a child on her own. She believes that Applicant today is a strong and trustworthy person. Applicant’s daughter has witnessed Applicant’s struggles in life firsthand since she was born in 1984, and she believes that Applicant has grown into a mature and trustworthy person. (AE P and Q.)

Policies

When evaluating an applicant’s suitability for national security eligibility, 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 concerns relating to the guideline for drug involvement and substance misuse are set out in AG ¶ 24, which reads as follows:

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 describes the following two conditions that raise security concerns and may potentially be disqualifying in this case:

- (a) any substance misuse (see above definition); and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position

Applicant's admissions in her Answer and her detailed testimony regarding her substance misuse establish the above potentially disqualifying conditions and shift the burden to Applicant to mitigate the security concerns raised by her conduct.

The guideline includes two conditions in AG ¶ 26 that could mitigate the security concerns arising from Applicant's alleged drug involvement and substance misuse:

- (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 the 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.

Both of the above mitigating conditions fully apply. Applicant's last drug use occurred more than seven years ago and was infrequent and under unusual circumstances. Applicant acknowledges that her use of marijuana in 2013 and 2016 was inconsistent with her responsibilities as someone who has been granted access to classified information and should never have occurred. Based on her abstinence over the past seven years, I conclude that this behavior is unlikely to recur and does not cast doubt on her current reliability, trustworthiness, and good judgment.

In my mitigation analysis, I have also taken administrative notice of the Security Executive Agent "Clarifying Guidance Concerning Marijuana for Individuals Eligible to Access Classified Information or Eligible to Hold a Sensitive Position," dated December 21, 2021 (Guidance). In her Guidance, the Security Executive Agent (SecEA) noted the increased number of states that have legalized or decriminalized the use of marijuana. She reaffirmed SecEA's 2014 memorandum regarding the importance of compliance with Federal law on the illegality of the use of marijuana by holders of security clearances. She provided further clarification of Federal marijuana policy writing that this policy remains relevant to security clearance adjudications "but [is] not determinative." She noted that the adjudicative guidelines provided various opportunities for a clearance applicant to mitigate security concerns raised by his or her past use of marijuana. (Guidance at 1.) Paragraph 1 is resolved in favor of Applicant.

Paragraph 2 - Guideline E, Personal Conduct

The security concerns relating to the guideline for personal conduct are set out in AG ¶ 15, which states:

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.

AG ¶ 16 describes the following condition that may raise security concerns and potentially be disqualifying 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 admitted that she deliberately provided false responses in her 2016 and 2019 e-QIPs to questions regarding her past illegal drug use. AG ¶ 16(a) is established and shifts the burden to Applicant to mitigate the security concerns raised by her conduct.

The guideline includes several conditions in AG ¶ 17 that could mitigate the security concerns arising from Applicant's falsifications in her e-QIPs:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, of 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;

(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; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Neither AG ¶¶ 17(a) nor (c) have been established. Applicant's correction of her omission from her 2016 e-QIP and her 2019 e-QIP regarding her use of illegal drugs occurred after her initial background interview in 2019. She made the correction only after an investigator had been advised by Applicant's sister that Applicant was a member of NA. At that point, Applicant knew that her deception had been uncovered, and she had to face the investigator and reveal her past involvement in illegal drugs, including smoking marijuana in 2013 and 2016. Her falsifications were not minor offenses, and her behavior casts doubt on her reliability, trustworthiness, and good judgment.

AG ¶¶ 17(d) and (e) have been partially established. In 2020 Applicant disclosed her secret about her past drug use and alleviated the immediate circumstances that caused her to be unreliable and untrustworthy. She also eliminated the potential for exploitation and duress regarding her past drug use. The timing of her positive steps and the circumstances under which she was forced to make her disclosure, however, significantly undercut the mitigation value of her actions. As a result, these mitigating conditions have not been fully established. Paragraph 2 of the SOR is resolved against Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility 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, including the whole-person factors quoted above. Applicant has not provided sufficient evidence to mitigate the security concerns raised by her deliberate falsifications about her illegal drug use in her e-QIPs. She is a mature and accountable adult who knowingly engaged in this deception in connection with two applications because she feared that the truth would disqualify her. The likelihood of recurrence of this recent untrustworthiness remains significant. Overall, the record evidence raises questions and doubts 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
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline E:	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 national security eligibility for a security clearance. Eligibility for access to classified information is denied.

JOHN BAYARD GLENDON
Administrative Judge