



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



In the matter of:)	
)	
)	ISCR Case No. 22-02394
)	
Applicant for Security Clearance)	

Appearances

For Government: Patricia Lynch-Epps, Esq., Department Counsel
For Applicant: *Pro se*

08/29/2023

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the personal conduct and drug involvement and substance misuse security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On February 6, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H (drug involvement and substance misuse) and Guideline E (personal conduct). The action was taken under Executive Order (EO) 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 (AG) implemented by the DOD on June 8, 2017.

Applicant responded to the SOR (Answer) on February 20, 2023, and she elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on March 21, 2023. A complete copy of the

file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on April 6, 2023, and she did not respond. The case was assigned to me on July 17, 2023. The Government's documents identified as Items 1 through 6 are admitted in evidence without objection.

Findings of Fact

Applicant admitted all the SOR allegations in her Answer, with explanations. She is 34 years old. As of her May 2022 security clearance application (SCA), she was not married, she did not have any children, and she has lived with her parents since 2019. She graduated from high school in 2008. She attended college in 2008 or 2009 and in 2013, but she did not earn a degree. She has worked as a mechanical technician for her employer, a DOD contractor, since approximately November 2010. She was first granted a security clearance in approximately April 2019. (Items 1-6)

Applicant used marijuana, with varying frequency, from approximately July 2008 to November 2017. (SOR ¶ 2.b) She used it socially and less than ten times. She disclosed this marijuana use on her July 2018 SCA. She indicated therein that she did not intend to use marijuana in the future because, "I don't like the smell or taste of it." (Items 2-4)

In approximately July 2021, while holding a security clearance, Applicant purchased and used a vape pen containing marijuana. She indicated in her August 2022 background interview that she smoked marijuana on this occasion recreationally, in her home, with a friend because she was bored. It made her feel relaxed. She further indicated that she realized she was not allowed to consume marijuana while possessing a security clearance, but she made a bad judgment call. She stated in her January 2023 response to interrogatories that this was a "one time purchase with cash legally in California. I think it was \$30." She stated that she decided thereafter to stop using illegal substances because "I just didn't like it and I honestly felt bad about it." She further stated that she did not have any intentions for future marijuana use, and she did not associate with individuals who use illegal substances or frequent places where illegal substances are used. (SOR ¶ 2.a; Items 2, 5)

Applicant did not disclose her relevant drug involvement in response to section 23 of her 2022 SCA, which inquired about illegal use of drugs or drug activity. She marked "No," and did not disclose her marijuana use from 2015 to 2017, and in 2021, in response to a question that inquired whether she had illegally used any drug or controlled substances in the last seven years. She also marked "No," and did not disclose her use of marijuana in 2021, while holding a security clearance, in response to a question that inquired whether she had ever illegally used or otherwise been illegally involved with a drug or controlled substance while possessing a security clearance. She also disclosed that she had a security clearance that was granted to her in 2019. (GE 2-3, 5)

Applicant indicated during her August 2022 background interview that she did not realize she omitted her drug use from her SCA. She stated in her Answer that she misunderstood the question. She stated:

When answering the question, I interpreted the question with “PREVIOUSLY LISTED” as in everything that I have listed including the incident in 2021. I have clearly misunderstood the wording of this question. (GE 2, 5)

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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.” 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 security 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 of 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

AG ¶ 24 expresses the security concern pertaining to drug involvement and substance misuse as:

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.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant: "(a) any substance misuse . . . ;" and "(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia."

Applicant used marijuana from 2008 to 2017. She also purchased and used marijuana in 2021, while holding a security clearance. AG ¶¶ 25(a) and 25(c) are established.

AG ¶ 26 provides the following potentially relevant mitigating conditions:

(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 used and purchased marijuana from 2008 to 2017, and again as recently as 2021. She said she was aware when she used it in 2021 that she had a security clearance. Her last use is recent enough that I cannot find that it is unlikely to recur. Although she expressed her intent to abstain from marijuana, she previously stated such an intention in her 2018 SCA and yet, she used marijuana again because she was bored. She did not provide a signed statement of intent to abstain from all drug involvement and substance misuse. I find that none of the above mitigating conditions are established for SOR ¶¶ 2.a and 2.b.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concern pertaining 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. . . .

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

(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 marked "No" and failed to disclose her marijuana use from 2015 to 2017, and in 2021, while holding a security clearance, in response to relevant questions on her May 2022 SCA. I do not find credible her claims, during her August 2022 background interview and in her Answer, that she did not realize she omitted her drug use from her SCA and that she misunderstood the question. She previously completed an SCA in 2018 and disclosed her relevant marijuana use, and yet she deliberately marked "No," in response to the relevant questions about her drug use on her 2022 SCA. She knew, and disclosed on her 2022 SCA, that she was granted a security clearance in 2019, and she knew she was not allowed to consume marijuana while possessing a security clearance. AG ¶ 16(a) is established.

AG ¶ 17 provides the following potentially relevant mitigating conditions:

(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; and

(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.

Applicant did not make prompt, good-faith efforts to correct her omissions on her regarding her relevant drug use on her 2022 SCA. Her omissions were not caused or contributed to by advice of legal counsel or of a person with professional responsibilities for security processes. Her omissions are not minor, occurred recently in 2022, and raises questions about her reliability, trustworthiness, and judgment. She failed to take responsibility for her deliberate omissions in her Answer. As such, I find that AG ¶¶ 20(a), 20(b), and 20(c) are not established.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline H and Guideline E in this whole-person analysis. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline E:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraph 2.a - 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 Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge