



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



In the matter of:)	
)	
)	ISCR Case No. 23-00092
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: Jeffrey Gard, Esq.

02/02/2024

Decision

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline H, drug involvement and substance misuse, and Guideline E, personal conduct. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On April 4, 2023, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines H and E. The DOD acted 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 answered the SOR on April 10, 2021. (This date is obviously incorrect, but it is listed as such in her SOR answer.) She requested a hearing. The case was assigned to me on September 20, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 28, 2023, and the hearing was held on

November 1, 2023, after initially being scheduled on October 31, 2023. The Government offered exhibits (GE) 1 through 5, which were admitted into evidence without objection. The Government's exhibit list and pre-hearing discovery letter were marked as hearing exhibits (HE) I and II. Applicant testified, offered the testimony of two witnesses, but offered no exhibits. The record closed at the completion of the hearing. DOHA received the hearing transcript (Tr.) on November 13, 2023.

Findings of Fact

Applicant admitted all the SOR allegations, with some explanations concerning the drug use allegations. Her admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 24 years old. In May 2021, she graduated from college with a degree in mechanical engineering. She is single, never married, and has no children. (Tr. 20, 41; GE 1-3)

Under Guideline H, the SOR alleged Applicant used marijuana, with varying frequency, from about February 2021 through about March 2021 (SOR ¶ 1.a); and that she used marijuana in about July 2021, after being granted eligibility for access to classified information. (SOR ¶ 1.b).

Under Guideline E, the SOR alleged that Applicant deliberately gave false information on her March 2021 security clearance application (SCA) when she failed to disclose her illegal drug use as stated in SOR ¶¶1.a-1.b above (SOR ¶ 2.a); and that she gave false information during her June 16, 2021 and July 27, 2021, background interviews, when she initially denied any use of illegal drugs. After being confronted with information about her marijuana use, she admitted it as described in SOR ¶¶1.a-1.b above. (SOR ¶ 2.b)

Applicant began working for her current employer, a DOD contractor, in her full-time position in August 2021. She had previously worked as a summer intern for this same employer from June to August 2020, the summer between her junior and senior years of college. She completed an SCA for the internship in February 2020 (GE 1) and was granted a security clearance in late July 2020, shortly before her internship ended. She also signed a classified nondisclosure agreement in June 2020 (GE 4). After her summer internship ended, she was asked to stay on with her employer through her last year of school as a part-time intern. All the work she performed during her summer internship and her part-time internship involved unclassified material. She agreed to take the part-time position and worked in this capacity from August 2020 to June 2021. She stopped working in July 2021 to have some time off before her full-time position started in August 2021. (Tr. 18-19, 31, 34; GE1-2)

In March 2021, Applicant completed a second SCA. In Section 23 of the SCA covering past drug use or activity, Applicant answered "No" to the question asking if in

the past seven years, she had illegally used any drugs or controlled substances. She also answered “No” to the question asking if she had ever used illegal drugs while possessing a security clearance. (GE 2)

On June 16, 2021, Applicant was telephonically interviewed by an investigator as part of her background check. She was asked about prior drug use and she answered that she had no involvement with any illegal drugs, including marijuana, in her past. (GE 3)

On July 27, 2021, Applicant was reinterviewed telephonically by the investigator about her drug activity. She was asked if within the past seven years she had used any illegal drugs or controlled substances and she responded, “No.” The investigator then confronted Applicant with information developed during the investigation that she had used marijuana edibles early in 2021. Applicant acknowledged that use and explained it by saying she had blocked that time from her mind. She further explained that she went through a breakup with her boyfriend and was home alone and upset. She decided to ingest several marijuana gummies (2-4) that her former boyfriend had given her. She went on to explain that earlier in her relationship with the former boyfriend, which started in February 2021, she smoked marijuana with him one time. She also ate a marijuana gummy on one other occasion. Her relationship with her former boyfriend ended in March 2023. Applicant claimed the reason she did not disclose this information when she was first interviewed was because she was nervous about the questions and just blurted out “No.” (GE 3)

The investigator asked Applicant about any other drug involvement and she admitted going on a picnic with friends in early July 2021, where she ate a marijuana edible offered by her friend. She acknowledged this use was after her initial interview with the investigator on June 16, 2021. (GE 3)

On July 29, 2021, Applicant called the investigator to relay additional details about her marijuana use. She smoked marijuana about four times with her former boyfriend. She ate edible forms of marijuana on two occasions. After her breakup with her boyfriend, she consumed four edibles. All this marijuana use occurred in February and March 2021. Applicant further described her claimed last use of marijuana with her friends in early July 2021. She also told the investigator that she initially failed to disclose this information because she “felt on the spot” and she feared losing her job. (GE 3)

Applicant’s hearing testimony was consistent with her later admissions of marijuana use in February, March, and July 2021, as described above. She claimed her last use of Marijuana was in July 2021. She also claimed she no longer associates with people who use drugs. She stated she had no intentions to use marijuana in the future. She further stated that she failed to disclose this information because she was scared of losing her job and she did not want to disappoint her parents. On cross examination, Applicant admitted that, as early as her first summer internship, she knew marijuana use was prohibited by her employer’s drug policy. She had to take a drug test before she started that internship. (Tr. 21-24, 26-28, 30, 33; GE 5)

Applicant testified that she has matured since she began her full-time employment in August 2021. Specifically, she has better friends now who do not use illegal drugs. She has a new boyfriend, and she has moved away from the location where her former friends live. (Tr. 41)

Applicant's two supervisors, one former and one current, testified for her at the hearing. Her former supervisor was in that position during 2021. She believes Applicant handled classified information in an appropriate manner. She also opined that Applicant is reliable and trustworthy. Applicant's current supervisor has been in that position since November 2022. He considers Applicant a good employee and has had no conduct or behavioral issues with her. She handled classified information in an appropriate manner. He is aware of the circumstances in this case and despite those, he has confidence in Applicant and believes that she should retain her security clearance. (Tr. 42-48, 62-64)

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 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, these guidelines are applied 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(a), the entire process is a careful weighing 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.

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 applicant or proven by Department Counsel, and 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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 Abuse

AG ¶ 24 expresses the security concern pertaining to drug involvement:

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 conditions that could raise a security concern and may be disqualifying. Those that are potentially applicable in this case include:

(a) any substance misuse;

(f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant's marijuana use in February and March 2021 is supported by her admissions and other evidence. As for her admitted use of marijuana in July 2021, while she held a security clearance at that time, there is no evidence that she had access to classified information during the time of her marijuana use. On the contrary, the evidence established that she was on an employment break between her part-time internship, which ended in June 2021, and the beginning of her full-time employment, which began in August 2021. There is insufficient evidence to support that she used marijuana during the time frame that she had access to classified information. I find only AG ¶ 25(a) applies to both allegations.

AG ¶ 26 provides conditions that could mitigate security concerns. Two potentially apply in this case:

(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 marijuana use was not frequent, however, it was recent, with all use occurring in 2021. A troubling aspect of her marijuana use is that all it occurred after she was granted a security clearance in June 2020. She admitted she knew what her employer's drug policy was when she was hired as a summer intern during the summer of 2020 and that she was required to take a drug test at that time. Another troubling aspect of her marijuana use in July 2021, is that it came after she completed her second SCA in March 2021, after her first background interview with an investigator in June 2021, and before her second interview with the investigator on July 27, 2021, where she initially denied all drug use. Her claimed recent abstinence is insufficient to convince me that recurrence is unlikely. The recency of her past use, her use while holding a security clearance and, more specifically, after lying about her past marijuana use on multiple occasions, cast doubt upon her current reliability, trustworthiness, and good judgment. AG ¶¶ 26(a) does not apply. While she may have distanced herself from her drug using friends and stated her future intent not to use illegal drugs, she failed to present her intent in a written statement. While AG ¶ 26(b) has some application, it is insufficient to overcome her demonstrated unreliability, untrustworthiness, and poor judgment.

Guideline E, Personal Conduct

AG ¶ 15 expresses the personal conduct security concern:

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.

16. Conditions that could raise a security concern 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; and

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative.

Applicant admitted that she deliberately provided false information on her March 2021 SCA, and during her background investigation interviews on June 16, 2021 and July 27, 2021. Both AG ¶¶ 16(a) and 16(b) apply.

I have also considered all of the mitigating conditions for personal conduct under AG ¶ 17 and considered the following relevant:

(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.

Applicant's use of marijuana after she was granted a security clearance, and her failure to disclose that use on her March 2021 SCA and during her background interviews cause significant concerns. She was well aware of her responsibilities to disclose her drug use in 2021, when she completed her SCA and during her interviews, but she failed to do so. She did not make a prompt, good-faith effort to correct her previous falsifications, rather it was only after she was confronted by the investigator, during the July 27, 2021 interview, that she finally disclosed her past marijuana use. Deliberately providing false information on an SCA is not a minor offense. It strikes at the heart of the security

clearance investigation process. These actions raise questions about Applicant's reliability, trustworthiness, and judgment. Although Applicant claims she will not use illegal drugs in the future, her credibility is suspect. AG ¶¶ 17(a), 17(c), and 17(d) do not apply.

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 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.

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 considered Applicant's youth, and the supportive testimony of her supervisors. However, I also considered Applicant's history of marijuana use after obtaining a security clearance. She also deliberately falsified her 2021 SCA and her interviews because she was afraid that she would lose her job if she was truthful, thus putting her personal interests above being truthful to the Government. She failed to provide sufficient evidence to mitigate the drug involvement and personal conduct security concerns.

Overall the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns under Guidelines H and E.

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:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant

Paragraph 2, Guideline E:

AGAINST APPLICANT

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

Robert E. Coacher
Administrative Judge