



DEPARTMENT OF DEFENSE

DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:)
))
) ISCR Case No. 23-01180
))
Applicant for Security Clearance)

Appearances

For Government: Brittany C. White, Esq., Department Counsel
For Appellant: *Pro Se*

08/28/2024

Decision

MASON, Paul J., Administrative Judge:

Applicant’s illegal use of marijuana was infrequent and ended in March 2021. I firmly believe that she understands that as a contractor employee, neither marijuana nor any other illegal drug can be used under any circumstances or in any locations. Guideline H (Drug Involvement) has been mitigated.

Statement of the Case

On April 10, 2021, and May 26, 2016, Applicant submitted Electronic Questionnaires for Investigations Processing (e-QIPs) to obtain a security clearance required for her position with a defense contractor. On December 7, 2021 Applicant provided personal subject interviews (PSIs) to an investigator from the Office of Personnel Management (OPM). The Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Services (CAS) could not render affirmative findings required to grant a security clearance, and issued to Applicant a Statement of Reasons (SOR), dated October 24, 2023, detailing security concerns raised by the

guidelines for drug involvement (Guideline H). The action was taken under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992, as amended (Directive)), and the adjudicative guidelines (AG), effective in the DOD on June 8, 2017. On December 7, 2023, Applicant provided an answer to the SOR admitting all allegations under drug involvement.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 24, 2024, for a hearing on July 10, 2024. The hearing was held via Teams teleconference services as scheduled. The Government's three exhibits, (GE) 1 through 3, were entered into evidence without objection. Applicant submitted no exhibits. She called two witnesses, and she also testified. After the hearing, she provided two exhibits (AE) A and B which were entered into evidence without objection. (AE B is a copy of the second page of Applicant's December 7, 2023 answer to the SOR) DOHA received the hearing transcript (Tr.) on July 22, 2024, and the record closed the same day.

Findings of Fact

Applicant is 31 years old She married in October 2023 and has no children. In May 2012, she received an associate's degree, followed by a bachelor of science degree in May 2015. She received several professional certifications after college. She has been employed by a defense contractor since 2015. She began her employment as a principal consultant and is currently a principal architect. Her current position does not require a security clearance. (Tr. 35) Witness #1 has been her supervisor since 2015. Before her current employment, she was a software intern during college. Prior to that job, she was unemployed for various periods. From June 2011 to August 2012, she worked at a restaurant. (GE 1 at 13-20; Tr. 5, 34)

In October 2014, Applicant received a security clearance. In response to the drug questions listed under Section 23 of her May 2016 e-QIP, she averred that she had never used illegal drugs. (GE 2 at 28-30)

Applicant completed another e-QIP in October 2021. In response to Section 23 (Illegal use of Drugs or Drug Activity), she indicated that she had used marijuana in the last 7 years while possessing a security clearance, and affirmed that she would use the drug in the future. She started using the drug in June 2020, with her most recent use occurring in March 2021. (GE 1 at 33-36)

In December 2021, Applicant provided a PSI to an OPM investigator in which she furnished information about her illegal use of marijuana. From May 2019 to February 2020, she was counseled for depression. She confirmed the dates of her first and last use of marijuana as described in her October 2021 e-QIP. She used the drug for medical purposes to relieve stress and anxiety, and for recreation to help her relax.

She has never had drug counseling or treatment and was never diagnosed as drug dependent. Applicant stated that she had utilized other options i.e., exercise, prayer, to reduce the chances for future use. See AE B. While she knows that some friends used illegal drugs, she has not interacted with them when they are using drugs. (GE 3 at 4-5)

On October 6, 2023, Applicant was asked certain questions about her illegal drug use. She agreed that the information in her April 2021 PSA was accurate and she adopted the contents. She modified the beginning date of her marijuana use to 2019, and explained that she inhaled or ingested the drug through edibles approximately 20 times from 2019 to 2021. Applicant signed the interrogatories on October 6, 2023, declaring under penalty of perjury that her responses were correct. (GE 3 at 5-13)

At the July 2024 hearing, Applicant testified that she revealed her use of marijuana in her October 2021 e-QIP because she desired to tell the truth about her drug history. (Tr. 33) She used no marijuana in high school or college. Her first use occurred during her residence in another state for about a month in June 2020. When she returned to the local area sometime later in 2020, she continued to use the drug until March 2021. She never purchased the drug. (Tr. 34-38)

Applicant knew as an employee of a defense contractor at the time she used marijuana, that it was a violation of federal law. She did not know that she was still violating federal law even with a state medical marijuana card. As she indicated in her December 2021 PSI, she stopped associating with drug users in March 2021. (Tr. 39-44)

In August 2019, Applicant's excessive drinking was aggravating her depression and anxiety, resulting in suicidal thoughts. She entered treatment at the recommendation of her therapist. During her treatment for about two months, she regularly attended Alcoholics Anonymous (AA). She has had no thoughts of suicide since February 2020. With the help of her therapist, church, prayer, friends and family, she has maintained her sobriety. She provided a statement of intent for forego all illegal drug involvement in the future, or incur termination of the security clearance eligibility. (Tr. 46-51; AE A)

Character Evidence

Witness #1 testified he has been Applicant's supervisor since 2018. In the period, he has generated written or oral performance evaluations of her work twice a year. He characterized her as an outstanding employee with strong leadership qualities. She has developed a reputation for providing sound solutions to complex questions. Witness #1 had no idea that Applicant used marijuana until she informed him a month before the hearing. With a favorable work performance and completing job tasks in a timely manner, Witness # 1 recommends Applicant for a security clearance. (Tr. 14-21)

Witness #2 met Applicant in 2017 through their membership in the same church. They have become good friends. She knew that alcohol was an immense problem for Applicant, so much so that she enrolled in a treatment program for about two months. She believes that Applicant has been sober since 2020. (Tr. 22-30)

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 and 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.

In my analysis of this case, I have taken administrative notice of Executive Order (E.O.) 12564 signed by the then-President of the United States on September 15, 1986. The primary positions addressed in the E.O. are: (1) federal employees cannot use illegal drugs; (2) illegal drug use by federal employees, on or off duty, is contrary to

the efficiency of the service; and (3) persons who use illegal drugs are not suitable for federal employment.

I have also taken administrative notice of the Director of National Intelligence Memorandum (October 25, 2014), *Adherence to Federal Laws Prohibiting Marijuana Use*, which clearly states that state laws do not authorize persons to violate federal laws, including the Controlled Substances Act (21 U.S.C. §§ 801-971 (1970)), which identifies marijuana as a Schedule 1 controlled drug.

Changes in state laws or the District of Columbia, pertaining to marijuana use do not change the existing National Security Adjudicative Guidelines (Security Executive Agent Directive 4, effective June 8, 2017). An individual's disregard of the federal law pertaining to marijuana involvement remains adjudicatively relevant in national security determinations.

On December 21, 2021, the Director of National Intelligence signed the memorandum, *Security Executive Agent Clarifying Guidance Concerning Marijuana for Agencies Conducting Adjudications of Persons Proposed for Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*. It emphasizes that federal law remains unchanged with respect to illegal use, possession, production, and distribution of marijuana. Disregard of federal law relevant to marijuana use (including prior recreational marijuana use) remains relevant, but not determinative to adjudications of security clearance eligibility. Agencies are required to employ the "whole-person concept" stated under SEAD 4, to determine if an applicant's behavior raises a security concern that has not been mitigated.

AG ¶ 25. Conditions that could raise a security concern and may be disqualifying include:

- (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.

Applicant's illegal use of marijuana from June 2020 to March 2020 meets the definition of AG ¶¶ 25(a) and ¶ 25(c). However, AG ¶ 25(f) does not apply because the record does not establish that Applicant was handling classified information in the period between 2020 and March 2021. There is no evidence that she signed a nondisclosure agreement and had a "need to know." In addition, she testified that her position did not require a security clearance. See ISCR Case No. 20-03111 at 3 (App. Bd. Aug. 10, 2022)

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 drug use was infrequent and stopped over three years ago. She has developed a strong network of support consisting of her therapist, her church, the friendship of witness #2 and other friends, her family, and exercise, to maintain her commitment to leading a drug free life. This strong support network convinces me that she is unlikely to resume illegal drug use in the future. Applicant's past behavior no longer raises doubt about her current reliability, trustworthiness, or good judgment. AG ¶ 26(a) applies.

Applicant provided a signed statement of intent to refrain from any drug use, acknowledging that future drug use is grounds for revocation of security clearance eligibility. She has taken complete responsibility for her past illegal drug use. She severed ties with her drug using associates in March 2021. AG ¶¶ 26(a), 26(b)(1), 26(b)(2), and 26(b)(3) apply to mitigate Applicant's illegal drug use.

Whole-Person Concept

I have examined the evidence under the guideline for drug involvement/substance misuse 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.

Applicant is 31 years old. She recently married in October 2023. Witness #1, who has been Applicant's supervisor since 2018, extols her work product, as well as her ability to reach effective solutions to complex questions. Witness #2, Applicant's friend since 2017, is aware of her struggles with substance abuse in the past but has seen her take the necessary recuperative steps to restore a healthy lifestyle.

The favorable evidence supporting a security eligibility is sufficient to overcome Applicant's illegal marijuana use between June 2020 and March 2021. I found Applicant to be a credible witness who laments her past illegal drug use. Considering all the evidence for and against Applicant, together with the favorable character evidence from two character references, Applicant has successfully met her burden of persuasion under Guidelines H.

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
Subparagraph 1.a:	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 interest 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

