



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



In the matter of:)
)
-----) ISCR Case No. 14-00154
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

06/17/2014

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under the adjudicative guideline for drug use. Her eligibility for a security clearance is denied.

Statement of the Case

On September 4, 2013, Applicant signed and completed a security clearance application (SCA) in which she admitted the use of illegal drugs on three occasions between 2012 and 2013. On February 25, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H (Drug Use). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In an undated response to the SOR, Applicant admitted the sole allegation raised. She chose not to have a live hearing before an administrative judge. On April 10, 2014, the Government submitted a File of Relevant Material (FORM), containing five attachments, to support the Government’s position that allowing Applicant access to

classified information is not clearly consistent with the national interest. Applicant did not respond to the FORM. The case was assigned to me on June 2, 2014. Based on a thorough review of the case file and submissions, I find that Applicant presented insufficient information to mitigate security concerns. Security clearance is denied.

Findings of Fact

Applicant is a 62-year-old woman who has worked for the same employer since 1978. She has no prior military service. She is divorced and has one adult child. There is no evidence Applicant has earned an academic diploma or degree.

Although she suffers from asthma, Applicant smoked marijuana through a pipe while on vacation in June 2012. She did so at a party where she also was imbibing alcoholic beverages. She knew that the use and possession of marijuana is against the law. Inhaling the marijuana smoke triggered her asthma. Despite this fact, she again smoked marijuana while drinking liquor on vacation at a family cottage in July 2013. Later that same month, under similar circumstances, she used marijuana for a third time, but in the form of a baked product (cookie). Despite its solid form, the marijuana cookie still gave her an adverse physical reaction. She retained the uneaten half of the cookie. Applicant was with the same companion on all three of these occasions. She and this individual still maintain contact. (FORM, Item 5 at 7)

During an October 7, 2013, subject interview, Applicant disclosed that she had consumed marijuana a fourth time after certifying her September 2013 SCA. (FORM, Item 5 at 7 and Item 3). On this fourth illegal use of the drug, Applicant was again imbibing alcohol while on vacation at her family cottage. Her drug use consisted of sharing the remainder of the cookie she began consuming in July 2013 with another friend. Applicant again suffered another adverse physical reaction. Applicant still maintains contact with this friend.

Each time Applicant used marijuana in some form, she experienced an asthmatic or other reaction. After using the drug four times over an approximately 15-month period (June 2012 through September 2013), she no longer intends to use the drug again. She stresses that her marijuana use has not adversely impacted her life, and that she has not developed an addiction to the drug.

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(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 access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and derived from 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 the applicant may deliberately or inadvertently fail to safeguard classified information.

Section 7 of Executive Order 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

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because raises questions about a person's ability or willingness to comply with laws, rules, and regulations. (AG ¶ 24) "Drugs" are defined as mood and behavior altering substances and include drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended, (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens) and inhalants and other substances. (AG ¶ 24(a)(1-2)) "Drug abuse" is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction. (AG ¶ 24(b))

Here, Applicant admits using marijuana on multiple occasions between June 2012 and September 2013. She admits that she knew the use and possession of marijuana were illegal. Such facts are sufficient to raise Drug Involvement Disqualifying Conditions AG ¶ 25(a) (*any drug abuse*) and 25(c) (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia*). With disqualifying conditions raised, the burden shifts to Applicant to mitigate related security concerns.

Applicant's 15-month period of drug use was recent, lasting from June 2012 through September 2013. She has since been drug-free for about nine months. There is no indication of any changes she might have made to aid her in avoiding marijuana use going forward, explaining why she repeatedly used the drug despite the fact she consistently had an adverse physical reaction each time she used it, or why she used the drug after certifying her SCA. She still maintains social contact with the two friends with whom she used marijuana. There is no indication she has abandoned use of the family cottage where she used the drug on three occasions.

Although she now claims she has no intention to use the drug again in the future, Applicant declined to offer a statement of intent with automatic revocation of clearance should she again be determined to be involved with drugs. She offered no recommendations from peers, community contacts, or professional associates addressing her accomplishments, community involvement, or qualifications for maintaining a security clearance. Therefore, due in part to the paucity of evidence submitted, I find Drug Involvement Mitigating Conditions AG ¶ 26(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*); AG ¶ 26(b)(1) (*disassociation from drug-using associates and contacts*); AG ¶ 26(b)(2) (*changing or avoiding the environment where drugs were used*); AG ¶ 26(b)(3) (*an appropriate period of abstinence*) and AG ¶ 26(b)(4) (*a signed statement of intent with automatic revocation of clearance for any violation*) 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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). 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 the three above-referenced guidelines in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed above, but some warrant additional comment.

Applicant is a 62-year-old woman who has worked for the same employer for 36 years. She has no military experience. She is divorced and has one adult child.

Applicant actively abused marijuana, which she knew to be an illegal substance, despite a known adverse physical reaction to the drug. This demonstrated genuine persistence without due regard to her own personal health. She did so over a 15-month period, continuing to use the illegal drug after she certified a SCA. Her subsequent nine months of being drug-free is notably short in contrast to her 15 months of drug abuse. Meanwhile, Applicant still socializes with her drug-abusing cohorts. While there is no evidence Applicant became addicted to marijuana, a period of abstinence commensurate to or longer than her period of marijuana abuse is needed to mitigate security concerns regarding her drug use.

These cases constructively put the burden on an Applicant to mitigate security concerns. In choosing an administrative determination on the record, Applicant limited her information and evidence to her submissions, which failed to flesh out the facts at issue and mitigate concerns raised by her admission of drug use. While she should be commended for truthfully disclosing her past drug abuse on her SCA, the brevity of her period of abstinence and her decision to continue using marijuana after certifying her SCA answers sustains 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 H:	AGAINST APPLICANT
Subparagraph 1.a:	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 a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge