



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 12-05045
)	
Applicant for Security Clearance)	

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: Ronald C. Sykstus, Esq.

08/22/2014

Decision

MALONE, Matthew E., Administrative Judge:

Applicant used marijuana frequently between 1983 and 2002. She also used marijuana on one occasion in 2006 after she had been granted a security clearance. Applicant deliberately omitted her drug use from her first security clearance application in 2002, but disclosed her drug use in a 2011 clearance application. The reliability of her statement of intent to abstain from illegal drug use is undermined by inconsistencies in her testimony about her 2006 drug use, and by her continued association with persons who use marijuana and the fact that she and her husband sometimes socialize where they know illegal drugs will be present. Clearance denied.

Statement of the Case

On November 3, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (eQIP) to renew a security clearance required for her employment with a defense contractor. After reviewing the results of Applicant's background investigation, which included her responses to interrogatories issued by adjudicators for the Department of Defense (DOD), it could not be determined that it is

clearly consistent with the national interest to continue Applicant's access to classified information.¹ On March 27, 2014, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the adjudicative guidelines (AG)² for drug involvement (Guideline H) and personal conduct (Guideline E).

Applicant timely answered the SOR (Answer) and requested a hearing. The case was assigned to me on May 13, 2014, and I convened a hearing on June 19, 2014. The parties appeared as scheduled. Department Counsel presented Government's Exhibits (Gx.) 1 - 3,³ and Applicant presented Applicant's Exhibit (Ax.) A - N.⁴ All exhibits were admitted without objection. Applicant also testified and presented four witnesses. DOHA received a transcript (Tr.) of the hearing on June 26, 2014.

Findings of Fact

The Government alleged under Guideline H that Applicant used marijuana from about 1983 until July 2006 (SOR 1.a); and that she used marijuana after being granted a security clearance (SOR 1.b). Applicant admitted both allegations.

The Government alleged under Guideline E, that Applicant intentionally made a false official statement when she omitted her use of drugs from a security clearance application (SF 86) she submitted on March 1, 2002, by answering "no" to the following question:

Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogens (LSD, PCP, etc.), or prescription drugs? (SOR 2.a).

It was also alleged under Guideline E that Applicant intentionally made a false official statement in a security clearance application (SF 86) she submitted on March 1, 2002, by answering "no" to the following question:

Have you EVER illegally used a controlled substance while employed as a law enforcement officer, prosecutor, or courtroom official; while possessing a security clearance; or while in a position directly and immediately affecting public safety? (SOR 2.b)

¹ Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

² The adjudicative guidelines were implemented on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

³ A copy of Department Counsel's letter forwarding the Government's exhibits to Applicant in advance of hearing is included in the record as Hearing Exhibit (Hx.) 1. Also, an index listing each exhibit is included in the record as Hx. 2.

⁴ An index listing Applicant's exhibits is included as Hx. 3.

Applicant admitted, with explanation, SOR 2.a, but denied, with explanation, SOR 2.b. At hearing, Department Counsel acknowledged that SOR 2.b could not be supported because Applicant had not yet received a security clearance when she submitted her March 2002 SF 86. Department Counsel moved to withdraw that allegation and I granted the motion. (Tr. 6)

Applicant's admissions are incorporated in my findings of fact. Having reviewed the response to the SOR, the transcript, and exhibits, I make the following additional findings of fact.

Applicant is 56 years old and employed by a defense contractor in a software configuration management job she has held since July 2008. From February 2002 until July 2008, she worked for a different defense contractor performing the same work. Applicant was married from July 1987 until September 2004, although she and her ex-husband separated in 2003. Applicant remarried in May 2011. She has no children from either marriage. In 1982, Applicant earned a bachelor's degree in biology with a minor in English. She first received a security clearance in April 2002. (Gx. 1)

Applicant first used marijuana in 1983, at age 25, when she started a relationship with a boyfriend who used drugs. Her marijuana use continued when she married her first husband, who she knew used illegal drugs when they met. Her illegal drug use occurred at least weekly between 1983 and 2002. Applicant never bought or sold marijuana and used it only when it was offered. Applicant's first marriage ended when her ex-husband's drug use expanded to include cocaine and crack cocaine. She also suspected he was manufacturing illegal drugs for sale. Applicant described their marriage as "tumultuous" and claimed that she quit using drugs when she applied for a clearance in 2002, even though she was still living with her first husband, who continued to use drugs. (Answer; Ax. N; Gx. 1; Gx. 3; Tr. 20 - 28, 47 - 49)

Applicant's second husband has also used marijuana, but not since 2006. Applicant has known her current husband socially for about 20 years, but she testified she was unsure when they married if he used marijuana. In July 2006, Applicant and her second husband attended a weekend outdoor music festival where they camped out and listened to several different bands from around the country. Applicant knows that illegal drug use is not unusual at that event. At some point during the 2006 festival, people in an adjoining tent offered to share a joint with Applicant, her husband and a few other people. Applicant averred that they passed the joint around, and Applicant took two puffs. She claimed she realized she had made a mistake in using drugs while holding a clearance and removed herself from the situation. However, Applicant's husband testified that they, along with a few other people, smoked a joint while walking around the concert grounds. According to him, Applicant remained with the group the whole time and did not appear concerned that she had made a mistake in using illegal drugs. (Gx. 1; Gx. 3; Tr. 28, 58 - 62, 65)

Applicant and her second husband have returned to the same music festival three times since 2006. They also participate in an annual rafting trip and attend a New Years Eve event. They both know that marijuana is used by some participants at both

events, but they deny having used any drugs during those events since 2006. (Gx. 3; Tr. 50 - 54)

Since August 2003, Applicant has been active in Al-Anon, a support group for family members and others with close association with alcoholics and drug addicts. She started attending to help her cope with the effects of her first husband's drug use. After attending meetings five times a week for about two years, she since has been attending meetings about twice a week. Applicant claims that she used drugs because she was not addicted to drugs or otherwise desired the drugs themselves; rather, she claims she is drawn to or even addicted to men who use drugs. She attends Al-Anon because it helps her understand the dynamics behind her drug use and helps her maintain her vigilance against using drugs again. She submitted a signed statement of her intent to abstain from future illegal drug use. (Answer; Ax. A; Tr. 30 - 33, 45 - 46, 54 - 56)

Applicant deliberately omitted from her first clearance application in 2002 the fact that she had used illegal drugs. While she claimed that her omission was rooted in a denial that she was engaging in improper conduct, she also acknowledged that she did not disclose her drug use because she was afraid she would not be hired for her first defense contractor job or that it would keep her from getting a clearance. Applicant was, at all times, aware that using marijuana was against DOD policy and against the drug policies of her current and previous employers. (Answer; Tr. 28 - 29, 37 - 38)

Applicant has an excellent reputation in the workplace. She has received awards and other forms of recognition for her work, and her performance evaluations reflect a solid work record. Testimony from her supervisor for the past three years extolled her honesty, dedication, and reliability. However, the supervisor was not aware that Applicant had intentionally falsified her 2002 security clearance application. Rather, he was under the impression she had listed the wrong date for when she stopped using marijuana or that she had failed to respond to a request from the DOD CAF. Also, a family member and a friend of more than 20 years each testified that she has been a much improved person, who is honest, caring, and happy, since she ended her first marriage. The friend who testified was not aware that Applicant had used illegal drugs. (Ax. B - M, Tr. 73 - 111)

Policies

A security clearance decision is intended to resolve whether it is clearly consistent⁵ with the national interest for an applicant to either receive or continue to have access to classified information. Each decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁶ and consideration of the pertinent criteria and adjudication policies in the adjudicative guidelines. Decisions must also reflect consideration of the factors

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶ Directive. 6.3.

listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole-person” concept, those factors are:

(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.

The presence or absence of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the government's case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁷

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.⁸

Analysis

Drug Involvement

Applicant began using marijuana in 1983, when she was 25 years old. She used the drug with varying frequency for about 19 years. She stopped in 2002 because she was applying for a defense contractor job which required she become eligible for a security clearance. After receiving her clearance, she abstained until one occasion in 2006 when she and her second husband attended a music festival where they knew illegal drugs might be used. Applicant still attends concerts, rafting trips, and other social events where she knows other attendees may use marijuana. This information raises a security concern articulated at AG ¶ 24 as follows:

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; AG ¶ 2(b).

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 it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

(a) Drugs are defined as mood and behavior altering substances, and include:

(1) 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 (2) inhalants and other similar substances;

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

More specifically, information about Applicant's drug use requires application of the following AG ¶ 25 disqualifying conditions:

(a) any drug abuse (see above definition); and

(g) any illegal drug use after being granted a security clearance.

I also have considered the following AG ¶ 26 mitigating conditions, which may be pertinent to these facts and circumstances:

(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;

(b) a demonstrated intent not to abuse any drugs in the future, such as: (1) dissociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; and (4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant's last known use of marijuana was eight years ago. Since 2003, she has also been an active participant in Al-Anon, which she claims has helped her abstain from using marijuana. However, the basis for her participation lies in her feeling that she is addicted to men who use drugs. Nothing about her approach to sobriety indicated that she herself was taking responsibility for her own actions and decisions. Further, her statements and testimony about what happened at the music festival in 2006 conflict with her husband's, who was also there and used marijuana with her. Finally, despite her responsibilities as a holder of a security clearance, she and her husband still place themselves several times a year in circumstances where marijuana is present. Questions remain about her judgment, and those questions undermine the reliability of the statement of intent she submitted in Ax. A. On balance, I conclude that none of the

AG ¶ 26 mitigating conditions apply and that Applicant has not mitigated the security concerns about her past drug use.

Personal Conduct

Applicant first applied for a security clearance in 2002. To obtain that clearance, she deliberately withheld from the Government the fact that she had used marijuana for most of her adult life. This information is sufficient to raise a security concern about his personal conduct, which is addressed at AG ¶ 15, as follows:

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Specifically, the record requires application of the following AG ¶ 16 disqualifying condition:

(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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Of the mitigating conditions listed under this guideline at AG ¶ 17, the following are pertinent to these facts and circumstances:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; 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 claimed she was “in denial” about her long-term drug use when she omitted her drug use. However, she also acknowledged that she was worried that she would not get the clearance required for her to work for a defense contractor. Applicant is credited with disclosing her past drug use in a 2011 clearance application. However, this does not constitute a prompt, good-faith correction of her earlier falsifications. She has held a security clearance since 2002 based, in large measure on incomplete information that may have adversely affected the Government’s ability to assess her suitability for access. Falsification of such information is not a minor infraction, particularly where it is the Applicant’s first opportunity to demonstrate willingness to place the Government’s interests first.

I recognize that this act of deception by Applicant is 12 years old. In assessing whether Applicant is now sufficiently credible and willing to be candid about adverse information in her background, I have considered her statements to investigators and her testimony at hearing regarding her 2006 use of marijuana. She claimed that she took two puffs of a joint and then removed herself from the group that was using marijuana. But her own husband testified that she stayed with the group the entire time and did not show any concern about using marijuana while holding a security clearance. I found Applicant's testimony on this point to be less than credible. Based on these facts, and along with all of the other adverse information in this record, I conclude that none of the AG ¶ 17 mitigating conditions apply and that Applicant has failed to mitigate the security concerns about her truthfulness.

Whole-Person Concept.

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guidelines H and E. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is 56 years old and has established a good reputation at work for reliability and trustworthiness. One of her witnesses at hearing, who testified that he knows her to be truthful and straightforward, was not aware that she deliberately omitted her drug use when she first applied for her clearance. Another supportive witness who has known Applicant for more than 20 years, did not know that Applicant had ever used marijuana.

Further, little in Applicant's statements and testimony shows that she has taken full responsibility for her decisions. Instead, she claims to be addicted to men who use drugs and has been participating in Al-Anon for help in dealing with this perceived problem. This approach is difficult to reconcile with the fact that Applicant still has not changed her lifestyle so as to avoid situations where marijuana is being used. Finally, this record leaves me with reasonable doubts about Applicant's credibility. She deliberately lied to the Government to get her clearance and a defense contractor job in 2002. She has not fully disclosed to her supervisor or to a long-time friend, both of whom testified that she is of good character and judgment, the full scope of her misconduct. Combined with conflicting versions of the details of her drug use in 2006, her statements of intent to comply with Government policies and procedures in the future cannot be given full weight.

In summary, a fair and commonsense assessment of all information bearing on Applicant's suitability for access to classified information shows continued reasonable doubts about her judgment, trustworthiness, and reliability. Because protection of the national interest is the primary concern here, those doubts are resolved against continuing Applicant's security clearance.

Formal Findings

Formal findings 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
Subparagraph 2.a:	Against Applicant
Subparagraphs 2.b:	Withdrawn

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest to continue Applicant's access to classified information. Request for security clearance is denied.

MATTHEW E. MALONE
Administrative Judge