



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



In the matter of:)
)
) ISCR Case No. 13-01302
)
Applicant for Security Clearance)

Appearances

For Government: Stephanie C. Hess, Esquire, Department Counsel
For Applicant: *Pro se*

06/24/2014

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant used marijuana socially about 25 times between September 2006 and April 2011 and cocaine five times between July 2010 and February 2011. In addition, she used Adderall without a prescription as a study aid for college examinations. Applicant was candid about her drug involvement, and she intends no future drug abuse. Clearance is granted.

Statement of the Case

On February 3, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline H, Drug Involvement, and explaining why it was unable to find that it is clearly consistent with the national interest to grant her a security clearance. The DOD CAF took the action under Executive Order 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 within the DOD on September 1, 2006.

On April 21, 2014, Applicant answered the SOR allegations, and she requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. On May 1, 2014, the Government provided discovery to Applicant. On May 13, 2014, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On May 15, 2014, I scheduled a hearing for June 3, 2014.

At the hearing, before the introduction of any evidence, the Government moved to amend SOR 1.b to allege that Applicant used cocaine rather than crack cocaine and SOR 1.d to correct a typographical error to allege that Applicant used Adderall. Applicant did not object, and the SOR was amended. One Government exhibit (GE 1) was admitted into evidence, and Applicant testified, as reflected in a transcript (Tr.) received on June 11, 2014.

At Applicant's request, I held the record open for two weeks for post-hearing documentary submissions. On June 16, 2014, Applicant submitted three exhibits, which were admitted into evidence without objection as Applicant exhibits (AEs) A-C. The record closed on receipt of the Government's response on June 16, 2014.

Findings of Fact

The amended SOR alleges under Guideline H that Applicant used marijuana approximately 25 times from September 2006 to April 2011 (SOR 1.a); used cocaine about five times from July 2010 to February 2011 (SOR 1.b); purchased marijuana twice from September 2009 to April 2011 (SOR 1.c); and used Adderall about three times in March 2008 (SOR 1.d). In her Answer to the initial SOR allegations, Applicant denied only the use of crack cocaine. She admitted that she had used marijuana, cocaine, and Adderall, and that she had purchased marijuana.

Applicant's admissions to the drug involvement are accepted and incorporated as findings of fact. After considering the pleadings, exhibits, and transcript, I make the additional findings of fact.

Applicant is a 25-year-old college graduate, who began her current employment as a cost analyst with a defense contractor in August 2012. She remained in her position after the company was acquired by another defense contractor. Applicant was recently promoted to a control account manager position. (AE B.) She seeks her first DOD security clearance. (GE 1; Tr. 23-24, 26.)

Applicant immigrated to the United States as a child with her parents and three siblings. She became a naturalized U.S. citizen when she was in high school in June 2005. (GE 1; Tr. 23.) During the fall of her senior year in September 2006, she began using marijuana while socializing with five or six close friends at "low-key gatherings." (GE 1; Tr. 27.) They would usually be drinking and someone would have marijuana. (Tr. 2-28.)

Applicant left home for college from August 2007 to May 2011. She used marijuana occasionally with her close friends, including her boyfriend, when home on school breaks and during the summers.¹ (GE 1; Tr. 27-28.) At college, her use of marijuana was limited, to two occasions between September 2009 and April 2011, when her boyfriend visited her. (Tr. 36.) She purchased the marijuana at her boyfriend's request, obtaining it from a friend of her roommate, who lived in the same building. (Tr. 30.) Applicant also used cocaine about five times between July 2010 and February 2011 with her close friends when she was home. (GE 1; Tr. 28.)

Applicant took non-prescribed Adderall as a study aid in college starting in September 2007. Applicant used it more than the three times alleged in the SOR. She obtained the drug from her roommate, who had a prescription for the drug. (Tr. 31.) In May 2011, Applicant moved home, and in January 2012, she was awarded her bachelor's degree. (Tr. 25.) Applicant used Adderall at least once thereafter, in May 2012. (GE 1.) She was aware that it was illegal to use the drug without a valid prescription. (Tr. 32.)

Applicant worked full-time as an assistant manager in retail from November 2011 until August 2012, when she began her current employment. On August 29, 2013, Applicant completed and certified to the accuracy of an Electronic Questionnaire for Investigations Processing (e-QIP). In response to the illegal drug use inquiries, Applicant disclosed that she recreationally abused marijuana, about 25 times, between September 2006 and April 2011, and cocaine about five times between July 2010 and February 2011. Applicant denied any intent to use either drug in the future. She did not like marijuana or its effects. About cocaine, she did not intend to use it in the future because of her employment and a lack of desire for the drug. Applicant also responded affirmatively to illegal drug purchase, and she disclosed that she bought marijuana a couple of times between September 2009 and April 2011, when a friend visited her at school. She denied any intent of future purchase. Applicant answered "Yes" to having misused a prescription drug in the last seven years. She reported use of Adderall between September 2007 and May 2012 "to help with studying and school-work." (GE 1.) Applicant stopped using Adderall, reportedly because she did not like its effect on her, which was similar to cocaine. (Tr. 32.)

Applicant does not intend to use any illegal drug in the future as she has put that phase of her life behind her. Applicant still associates with some of the same friends with whom she used marijuana and cocaine in the past. To her knowledge, these friends no longer use any illegal drugs. (Tr. 28-29.) Applicant believes that her boyfriend last used marijuana in 2012. He is currently enrolled in a military Reserve Officer Training Corps (ROTC) program and studying electrical engineering. (Tr. 36.) Applicant was last offered some marijuana in November or December 2013, when she gave her boyfriend a ride from his friend's residence. His friend's roommate was smoking marijuana, and offered her the drug. Applicant declined the offer. (Tr. 33-34.)

Applicant has demonstrated a strong work ethic in an often demanding job with her employer. A team player and very reliable, she was given the highest rating of

¹ Applicant held a full-time internship in a city near her home from January 2010 to April 2010, so she was away from the college campus. (GE 1.)

“Exceptional” for her overall work performance during the rating period from July 2012 through June 2013. (AE C.) In January 2014, she was selected as employee of the month in her office. (AE A.) Applicant’s employer worked hard to retain her when she received an outside offer of employment. Her supervisor trusts her “implicitly” and endorses her for a security clearance without any reservations. Her co-workers reportedly “only have the best things to say about her.” (AE B) Applicant has shown an ability to remain focused and calm in stressful situations. (AEs A-C.)

In addition to her full-time employment with a defense contractor, Applicant works at a restaurant three nights a week. She also teaches tennis and is pursuing her master’s degree in business administration. (AE B; Tr. 24, 26, 32.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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 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, 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 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 the applicant may deliberately or inadvertently fail to safeguard classified information.

Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of 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

The security concern for drug involvement is set out in AG ¶ 24:

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.

Under AG ¶ 24(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),² and
- (2) inhalants and other similar substances.

Under AG ¶ 24(b), drug abuse is defined as “the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.” Disqualifying condition AG ¶ 25(a), “any drug abuse,” applies because Applicant abused marijuana about 25 times from September 2006 to April 2011, cocaine five times from July 2010 to February 2011, and Adderall from September 2007 to May 2012. AG ¶ 25(c), “illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia,” is established in that Applicant purchased marijuana twice for her and her boyfriend to use when he visited her in college between September 2009 and April 2011. There is no evidence that Applicant ever paid for the cocaine or Adderall that she abused.

Mitigating condition 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,” cannot reasonably apply. Applicant has not used marijuana since April 2011, but her abuse was recurrent (25 times). Her abuse of Adderall was more frequent and recent than the three-

²Schedules I, II, III, IV, and V, as referred to in the Controlled Substances Act, are contained in 21 U.S.C. § 812(c).

time use in March 2008 that was alleged in the SOR. Applicant's abuse of cocaine was limited to a seven-month time frame, but it cannot be viewed in isolation from her involvement with marijuana and Adderall over 4.5 years' time.

On her August 2013 e-QIP and at her hearing, Applicant denied any intent to use marijuana or cocaine in the future and any intent to purchase an illegal drug in the future. Applicant was not specifically asked on the e-QIP about her intent concerning any future misuse of prescription drugs, and she did not state her intent. At her hearing, Applicant asserted that she did not intend any future involvement with Adderall. Under mitigating condition AG ¶ 26(b), "a demonstrated intent not to abuse any drugs in the future" may be shown by the following:

- (1) disassociation from drug-using associates and contacts;
- (2) changing or avoiding the environment where drugs were used;
- (3) an appropriate period of abstinence; or
- (4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant's candor about her drug involvement on her e-QIP and at her hearing leads me to accept that she intends no future drug abuse. Even so, she continues to associate with the friends with whom she smoked marijuana and used cocaine in the past. She is still dating the boyfriend for whom she purchased the marijuana during his visits in college. Applicant's uncontroverted testimony is that none of her friends, including her boyfriend, is still involved in illegal drug use. Applicant's boyfriend has a significant deterrent to him abusing marijuana in the future because of his ROTC enrollment. Yet, as recently as November or December 2013, he was visiting a friend whose roommate smokes marijuana. This friend's roommate offered marijuana to Applicant when she came to give her boyfriend a ride from the apartment. Under these circumstances, it is difficult to fully apply either AG ¶ 26(b)(1) or AG ¶ 26(b)(2).

AG ¶ 26(b)(3), "an appropriate period of abstinence," is implicated in that there is no evidence controverting Applicant's reported last abuse of marijuana in April 2011 and of cocaine in February 2011. Applicant disclosed on her e-QIP more recent involvement with Adderall, to about May 2012, which would have occurred after she left the university setting and presumably the roommate, who had been her source of the Adderall. Applicant's stated reason for using Adderall was "to help with studying and school-work. These were the only circumstances." (GE 1.) At her hearing, Applicant was not asked about the circumstances of her Adderall abuse in 2012. She testified about her Adderall use, as follows:

APPLICANT [name omitted]: I started using Adderall in my freshman year. I used it for big -- before big tests to study. And I got that from my roommate. She had a prescription.

MS. HESS: Okay. And you did that only three times. What made you not use it any more than that?

APPLICANT [name omitted]: I've actually -- I don't know if that said three times, but I -- it was more than three times.

MS. HESS: Okay. And what made you stop using Adderall?

APPLICANT [name omitted]: It has the same effects as cocaine. And I don't like how cocaine affects are.

MS. HESS: Okay. At any point when you were doing all of this, were you worried about the fact that it was illegal?

APPLICANT [name omitted]: Yes, yes.

MS. HESS: And is that part of why you don't use drugs anymore?

APPLICANT [name omitted]: That's a huge part of it now. (Tr. 31-32.)

It is unclear how Applicant obtained Adderall in 2012. Assuming that Applicant used the drug without a prescription to increase her concentration for graduate study, the reason for her abuse of that drug still exists.

Applicant did not present an affirmative statement acknowledging her understanding that any clearance would be revoked for any illegal drug involvement. However, she certified to the accuracy of her e-QIP, on which she expressed her intent not to use marijuana or cocaine in the future. At her hearing, she credibly explained that she stopped using Adderall as well because she did not like the drug's effects. She expressed no desire to abuse drugs in the future, in part because of her employment. I am persuaded that Applicant understands that any future drug abuse would be incompatible with her clearance obligations. Her commitment to maintain a drug-free lifestyle is consistent with AG ¶ 26(b)(4), "a signed statement of intent with automatic revocation of clearance for any violation." I am persuaded that she can be counted on to abide by her intent to abstain from any illegal drug involvement in the future. The drug involvement concerns are mitigated.

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 her conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).³ In making the overall commonsense determination required under AG ¶ 2(c), I have to consider Applicant's poor judgment in abusing marijuana, cocaine, and Adderall. She

³The factors under AG ¶ 2(a) are as follows:

(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.

abused the drugs, knowing that her drug involvement was illegal. At the same time, Applicant's drug abuse can reasonably be attributed to her youth and immaturity, and to the influence of peers, who shared their marijuana and cocaine with her. Her roommate in college appears to have introduced her to Adderall as a study aid, as she shared her prescription with Applicant.

Applicant demonstrated reform by committing herself to a drug-free lifestyle well before she started working in the defense industry. By candidly disclosing the extent of her drug involvement from the outset of the security clearance application process, she showed that her representations can be relied on. She has amply demonstrated her reliability and integrity on the job. For the reasons discussed under Guideline H, *supra*, I conclude that it is clearly consistent with the national interest to grant Applicant security clearance eligibility.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the amended SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

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|---------------------------|---------------|
| Paragraph 1, Guideline H: | FOR APPLICANT |
| Subparagraph 1.a: | For Applicant |
| Subparagraph 1.b: | For Applicant |
| Subparagraph 1.c: | For Applicant |
| Subparagraph 1.d: | For Applicant |

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Elizabeth M. Matchinski
Administrative Judge