



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 [NAME REDACTED]) ISCR Case No. 14-02736
)
 Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

03/11/2015

Decision

MALONE, Matthew E., Administrative Judge:

Applicant used marijuana about six times between 2008 and 2012, while she was in college. Although she still associates with one friend with whom she used marijuana, that friend also has not used any illegal drugs since 2012. Security concerns about Applicant’s use of illegal drugs are mitigated by her change of circumstances and by an appropriate period of abstinence. Applicant’s request for a security clearance is granted.

Statement of the Case

On December 18, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain a security clearance required for her job with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Department of Defense (DOD) could not determine

that it is clearly consistent with the national interest for Applicant to have access to classified information.¹

On July 23, 2014, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed at Guideline H (Drug Involvement).² Applicant timely responded to the SOR and requested a decision without a hearing. On November 26, 2014, Department Counsel issued a File of Relevant Material (FORM)³ in support of the SOR. Applicant received the FORM on December 12, 2014, and was notified that she had 30 days to file a response to the FORM. She timely submitted additional information, which has been included in the record without objection. The record closed on January 7, 2015, and the case was assigned to me on January 20, 2015.

Findings of Fact

The Government alleged⁴ that Applicant used marijuana between 2008 and 2013. (SOR 1.a). Applicant admitted this allegation, with an explanation. In addition to her admission, I make the following findings of fact.

Applicant is 24 years old and works for a defense contractor as a clinical research assistant. She has worked for her current employer since February 2014, but her initial application for a clearance was sponsored by a previous employer for whom she had worked since December 2013. Applicant left that job when the contract to which she was assigned expired. Applicant attended college from 2008 until 2012, when she received a bachelor of science degree. Applicant's educational and professional background also includes internships and other work in clinical research and public health issues. (FORM, Items 5 and 6)

In her EQIP, Applicant disclosed that she had used marijuana in college social settings about ten times when offered to her at parties, and that she last used marijuana in June 2013. She denied ever having bought, sold, or possessed illegal drugs. In her responses to the SOR and the FORM, Applicant revised her actual history of drug use. She used marijuana about five times between 2008 and 2011, and on one occasion in June 2012. She has not used illegal drugs since she graduated from college.

Applicant still associates with one of two friends with whom she used marijuana in college. She further avers that her friend also has not used marijuana since 2012.

¹ Required by Executive Order 10865, as amended. *See also* Directive, Section E3.1.1.

² *See* Directive, Enclosure 2. *See also* 32 C.F.R. § 154, Appendix H (2006).

³ *See* Directive, Enclosure 3, Section E3.1.7. The FORM included six documents (Items 1 - 6) proffered in support of the Government's case.

⁴ In addition to the Guideline H allegation in SOR 2, the SOR originally contained an allegation under Guideline B (Foreign Influence) at SOR 1 and 1.a. In the FORM, Department Counsel amended the SOR by withdrawing the Guideline B allegations under SOR 1 and 1.a. (FORM at 2.)

Applicant does not intend to use marijuana or other illegal substances in the future, and she characterizes her use of marijuana as experimental and a product of youthful indiscretion. (Response to FORM; FORM, Items 4 - 6)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁵ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. Decisions must also reflect consideration of the factors 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 determinative of a conclusion for or against an applicant. 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. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁶ for an applicant to either receive or continue to have access to classified information. Department Counsel must produce sufficient reliable information on which DOHA based its preliminary decision to deny or revoke a security clearance for an applicant. Additionally, Department Counsel must prove controverted facts alleged in the SOR.⁷ If the Department Counsel meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁸

Because no one is entitled to a security clearance, an applicant bears a heavy burden of persuasion to establish that it is clearly consistent with the national interest for the applicant to have access to protected information.⁹ A person who has access to such information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, there is a compelling need to ensure each applicant possesses

⁵ Directive, 6.3.

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ Directive, E3.1.14.

⁸ Directive, E3.1.15.

⁹ See *Egan*, 484 U.S. at 528, 531.

the requisite judgment, reliability, and trustworthiness of one who will protect the nation's 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 to classified information in favor of the Government.¹⁰

Analysis

Drug Involvement

Applicant's admitted use of marijuana is sufficient to raise a security concern about her suitability for access to classified information. That concern is articulated at AG ¶ 24, as follows:

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, available information requires application of the disqualifying conditions at AG ¶¶ 25(a) (*any drug abuse (see above definition)*).

In response to the Government's information, the following AG ¶ 26 mitigating conditions apply:

(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) 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; (4) a signed statement of intent with automatic revocation of clearance for any violation.

¹⁰ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

Applicant has not used illegal drugs in more than two years. Her drug use was sporadic and occurred under circumstances far different than those in which she currently finds herself. Although she still has contact with a friend with whom she used drugs in college, that friend also has not used drugs since 2012. Finally, Applicant's notarized responses to the SOR and the FORM regarding her intent to abstain from all future drug use meet the requirements of AG ¶ 26(b)(4). Available information is sufficient to mitigate the security concerns about Applicant's past drug use.

In addition to my evaluation of the facts and application of the appropriate adjudicative factors under Guideline H, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). A fair and commonsense assessment of all available information bearing on Applicant's suitability for access to classified information supports a conclusion in favor of the Applicant.

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 B:	WITHDRAWN
Subparagraph 1.a:	Withdrawn
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all available information, it is clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE
Administrative Judge