



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



In the matter of:)
)
) ISCR Case No. 14-03038
)
Applicant for Security Clearance)

Appearances

For Government: Nichole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

04/29/2016

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the drug involvement security concerns, but she did not mitigate the personal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On April 20, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and H (drug involvement). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on July 7, 2015, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on August 20, 2015. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and

submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on December 11, 2015. As of February 1, 2016, she had not responded. The case was assigned to me on April 22, 2016. The Government exhibits included in the FORM are admitted in evidence.

Findings of Fact

Applicant is a 42-year-old employee of a defense contractor. She has worked for her current employer since 2013. She is applying for security clearance for the first time. She has a bachelor's degree awarded in 1996, a master's degree awarded in 2004, and a Ph.D. awarded in 2013. As of March 2014, she had never married and she had no children.¹

Applicant smoked marijuana periodically from 1997 to 1999 when she was in college. She smoked marijuana at a friend's birthday party in 2011. She smoked marijuana with the friend again the next day. She has not used any illegal drugs since the two occasions in 2011. She no longer associates with her friends who used drugs. She signed a statement of intent not to use illegal drugs in the future with automatic revocation of clearance for any violation.²

Applicant intentionally failed to report her illegal drug use on her Questionnaire for National Security Positions (SF 86), which she submitted in August 2013.³ Above her signature, she certified:

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. . . . I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both (18 U.S.C 1001). I understand that negatively withholding, misrepresenting, or falsifying information may have a negative effect on my security clearance, employment prospects, or job status, up to and including denial or revocation of my security clearance, or my removal and debarment from Federal service.⁴

Applicant was interviewed for her background investigation in April 2014. The interviewer asked her if she had used any illegal substances in the last seven years. Applicant reported her marijuana use in 2011 and also her use while in college. She stated that she did not report her marijuana use on her SF 86 because she thought it would reflect poorly on her.⁵ Applicant wrote in her response to the SOR:

¹ Item 3.

² Items 2, 4.

³ Items 2-4.

⁴ Item 3.

⁵ Item 4.

I would like to state that I was anxious and apprehensive about providing information about illegal activities on the [SF 86] because I did not know what the consequences of such an admission would be. I was afraid that an admission of drug use would lead to an automatic termination of my employment, which I value and enjoy and did not want to lose. However, upon meeting with the examiner in-person, it became clear to me that honesty and truthful answers to the examiner's questions were needed in order to eliminate my vulnerability to external pressure, coercion, or exploitation.

Applicant submitted letters from supervisors attesting to her excellent job performance, fidelity, trustworthiness, honesty, work ethic, judgment, reliability, integrity, and willingness to abide by rules and regulations. Applicant informed her supervisors that she was untruthful about her marijuana use on her SF 86, but she reported it to the investigator.⁶

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 to be 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, administrative judges apply the guidelines 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."

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 the 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

⁶ Item 2.

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. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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.

The guideline notes conditions that could raise security concerns under AG ¶ 25. The disqualifying conditions potentially applicable in this case include:

- (a) any drug abuse;⁷ and
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant used marijuana when she was in college and again on two occasions in 2011. AG ¶¶ 25(a) and 25(c) are applicable.

AG ¶ 26 provides conditions that could mitigate security concerns. The following are potentially applicable:

- (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) disassociation from drug-using associates and contacts;

⁷ Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

- (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 has not used any illegal drugs since 2011. She no longer associates with her friends who used drugs. She signed a statement of intent not to use illegal drugs in the future with automatic revocation of clearance for any violation. I find that she demonstrated an appropriate period of abstinence and that illegal drug use is unlikely to recur. AG ¶¶ 26(a) and 26(b) are applicable.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

- (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.

Applicant intentionally provided false information about her marijuana use on her SF 86. AG ¶ 16(a) is applicable.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (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;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant corrected her false SF 86 during her background interview eight months later. She stated that she did not report her marijuana use on her SF 86 because she thought it would reflect poorly on her. She also stated that she was afraid that she would lose her job, which she values and enjoys.

The correction was not prompt, but Applicant is credited with disclosing the information to the investigator. AG ¶ 17(a) is partially applicable. She informed her supervisors about her marijuana use and that she was untruthful on her SF 86. AG ¶ 17(e) is applicable. Notwithstanding, I have continuing concerns. Applicant certified that she was aware that she was committing a criminal offense punishable by fine, imprisonment, or both, and that falsifying information could cause her to be denied a security clearance and lose her job. Despite those certifications, she decided to falsify her SF 86. I am unable to determine that the conduct is unlikely to recur. It continues to cast doubt on Applicant's current reliability, trustworthiness, and good judgment. AG ¶¶ 17(c) and 17(d) are not applicable. I find that personal conduct security concerns remain despite the presence of some mitigation.

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):

(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 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 Guidelines E and H in this whole-person analysis.

I considered Applicant's favorable character evidence. However, Applicant smoked marijuana and then lied about it on her SF 86 because she was afraid it could affect her job. Self-reporting is a fundamental requirement for clearance holders. I am concerned that she may again choose her job over the truth.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the drug involvement security concerns, but she did not mitigate the personal conduct 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:	For Applicant
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline E:	Against Applicant
Subparagraph 2.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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge