



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



In the matter of:)	
)	
)	ISCR Case No. 14-00579
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

11/03/2014

Decision

O’BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guidelines for drug involvement and personal conduct. Accordingly, her request for a security clearance is granted.

Statement of the Case

On April 18, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) citing security concerns under Guideline H (drug involvement) and Guideline E (personal conduct) of the Adjudicative Guidelines (AG).¹ In her Answer to the SOR, Applicant admitted the drug-related and personal conduct allegations, with explanations. She requested a hearing before an administrative judge.

¹ Adjudication of the case is controlled by Executive Order 10865, as amended; DOD Directive 5220.6 (Directive), as amended; and the Adjudicative Guidelines, which supersede the guidelines listed in Enclosure 2 to the Directive. They apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on August 14, 2014, and I convened the hearing on September 4, 2014. I admitted 2 Government exhibits (GE 1-2) and 11 Applicant exhibits (AE A-K). Applicant testified and presented the testimony of one additional witness. DOHA received the transcript on September 16, 2014.

Findings of Fact

Applicant's admissions are incorporated as findings of fact. After a thorough review of the pleadings and the record evidence, I make the following findings of fact.

Applicant is 50 years old. She married in 1985. She separated from her first husband in 2001, and they divorced in 2003. She has four children ranging from 15 to 21 years of age. She remarried in 2011. She earned a bachelor's degree in mathematics and computer science, and a master's degree in computer information systems. In 1990, she received her first security clearance, and at times has held a top secret clearance. She has worked for her current defense contractor employer since at least 1999. While working for a defense contractor in the 1990s, she lived in Europe and supported military exercises including Desert Shield and Desert Storm. She is currently a senior systems engineer. (GE 1, 2; AE E, F, G, J, K; Tr. 16-19, 27)

In 2006, Applicant had been dating a boyfriend for a few years. During a holiday weekend, when he suggested using marijuana, she refused. He suggested it again, and she allowed him to blow smoke from a marijuana cigarette into her mouth, on two occasions during the weekend. She testified she realized it was a bad decision as soon as she did it, because it was illegal, she had a security clearance, and it was not healthy. In her Answer, Applicant stated, "Although I was older and knew better, I let the person I chose to date, at that time, impair my judgment." She ended the relationship in February 2007. She has not been in touch with him or used marijuana since then. (Answer; Tr. 19-22, 28-31, 38-39)

In August 2007, Applicant completed an application for continued eligibility for her security clearance. She answered "No" to the following questions: Section 24, part (a) asked if she had "[i]llegally used any controlled substance, for example, marijuana" Section 24, part (b) asked if she had "[i]llegally used a controlled substance while. . . [p]ossessing a security clearance" (GE 2)

Applicant testified that when she completed her application, she "[w]asn't sure if the act of somebody blowing smoke into my mouth should be considered use so I struggled with that." She decided it did not qualify as drug use. In her Answer to the SOR, she explained that she responded "No" to the drug questions because she felt the behavior was "so out of my norm, I rationalized, in my judgment, that the passive reception of smoke would not be classified as illegal drug use." In August 2012, before beginning a polygraph examination, she informed the polygrapher of the events in 2006, and discussed whether the incident was a "use." The polygrapher told her it was illegal

drug use and should have been disclosed. Applicant stated she was not intending to be dishonest, but thought her conduct would not be considered drug use. Subsequently, Applicant was granted a security clearance. She disclosed her drug use to her husband. In 2012, she also disclosed her use to her daughters, “[b]ecause I wanted them to know the impact.” When she completed her next security clearance application in 2013, she disclosed her marijuana use. (Answer; GE 1; Tr. 23-24, 31-39)

Applicant testified she did not use illegal drugs before or after 2006. She submitted a statement of intent, notarized on August 18, 2014, that she will never use illegal drugs, or associate with anyone who does, and agreeing to automatic revocation of her security clearance if she violates her promise. (AE B)

Applicant's husband, a retired Air Force colonel, testified on her behalf. He is employed as a director for a defense contracting company, and holds a top secret security clearance with special accesses. He has held security clearances since 1980. He has known applicant since 2007. He opined in a character letter that she “[h]as outstanding values, solid morals, role-model character, and exercises sound judgment” and that “[w]ithin the last seven years, she has been in the top 10% to 20% of her career field with no negative management actions.” He testified Applicant informed him of the marijuana use in 2012, although Applicant believes she informed him before they were married in 2011. He testified the marijuana use was out of character for her. (AE K; Tr. 41-50)

Applicant has received performance awards from her current employer. In recognition of her significant contributions, Applicant received cash bonuses and stock shares in 2000, 2002 through 2004, 2007, and 2010. Her performance rating in 2013 was 4, “Frequently Exceeds Expectations.” She was described as a key member of her division, performing the highest quality work, with excellent interpersonal skills, great leadership abilities, and technical excellence. In 2010, she was described as reliable and “dedicated to flawless performance.” She was described in 2011 as a consummate team player and team builder who “[g]ets the hard jobs done.” Her performance in 2012 “significantly and consistently exceeds [company] expectations in virtually all aspects of the position.” (AE H, I)

Applicant submitted character reference letters from friends and colleagues who have known her from 7 to 29 years. All of them know of the 2006 drug use. Applicant's first husband provided a letter attesting to her character. He has known her since 1985, and stated that during their divorce, his ex-wife conducted herself “with the utmost integrity and fairness.” He described her as “[a] woman who held honesty as a core value.” Her supervisor, who has known her for 12 years, described her as “extremely trustworthy” and stated he “[f]irmly believe[s] that [Applicant] did not intend to deceive anyone with incorrect responses on her SF-86. She has always comported herself with honesty in all of our dealing together.” (AE K)

Applicant's co-worker for 16 years, who worked with her for eight years in Europe, noted that Applicant comports herself "[w]ith nothing but the highest ethical and professional standard," and that "[H]er ethics, honesty and professionalism make her a touchstone for others." She listed Applicant's community involvement including coaching her daughter's soccer team, and participating in the Marine Corps marathon. She noted the family's involvement in their church, and one daughter's participation in a humanitarian health mission in Africa while training to become a nurse. (AE K)

One colleague of 10 years stated that Applicant provides guidance and leadership to junior team members, and that she is honest and trustworthy. A supervisor who has known Applicant for 24 years commented on her outstanding performance for many years, and the valuable service she provided through her support of federal agency, Army, and Air Force projects. (AE K; Tr. 25)

Policies

Each security clearance decision must be a fair and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.² Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the "whole-person" concept. The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guidelines H (drug involvement) and E (personal conduct).

A security clearance decision is intended only to resolve the question of whether it is clearly consistent with the national interest³ for an applicant to either receive or continue to have 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.⁴ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the

² Directive. 6.3.

³ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴ See *Egan*, 484 U.S. at 528, 531.

requisite judgment, reliability, and trustworthiness of one who will protect the national interests as her or his 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.⁵

Analysis

Guideline H, Drug Involvement

AG ¶ 24 expresses the security concern about 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 it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

I considered the following disqualifying conditions listed at AG ¶ 25:

- (a) any drug abuse; and
- (g) any illegal drug use after being granted a security clearance.

Applicant allowed her boyfriend to blow smoke from a marijuana cigarette into her mouth two times in 2006, while she held a security clearance. There is no record evidence that Applicant bought, sold, or cultivated marijuana; that she was diagnosed by a medical professional with drug abuse; or advised to attend a drug treatment program. AG ¶¶ 25(a) and (g) apply.

Two of the four mitigating conditions are relevant under 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; and
- (b) a demonstrated intent not to abuse any drugs in the future, such as:
 - (1) disassociation from drug-using associates and contacts;

⁵ See *Egan*; AG ¶ 2(b).

- (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.

Applicant made a serious mistake when she used marijuana, even if passively, while holding a security clearance. However, her conduct is not recent, and her eight years without marijuana use demonstrates her intent to avoid involvement in illegal drug use. It was also infrequent, occurring twice in her life. Applicant regrets her actions. In addition, the changed circumstances in her life make a recurrence unlikely: she used marijuana with a boyfriend whom she subsequently stopped seeing; she is now married to a man who has held a security clearance for decades, and does not engage in illegal drug use. Both she and her husband understand the significance of such conduct. Her poor decision eight years ago, especially in light of her non-recurrence, stable family life, and excellent job performance, does not cast doubt on her current trustworthiness and judgment. AG ¶ 26(a) applies.

Applicant also receives mitigation under AG ¶ 26(b). She has abstained from marijuana use for the past eight years. She has not associated with the man with whom she used marijuana for seven years. She has no intention to use marijuana in the future, and is aware, based on her notarized statement, that should she renege, she is subject to revocation of any security clearance she might hold. AG ¶ 26(b) applies.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern about personal conduct:

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.

Under AG ¶ 16, the following disqualifying conditions are relevant:

- (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; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing

In July 2006, Applicant's boyfriend blew marijuana smoke into her mouth two times. When Applicant completed her security clearance application in 2007, she thought this conduct was not a "use" of an illegal drug. Based on this conclusion, she answered "No" when asked if she had used marijuana within the previous seven years, or while holding a security clearance. She did not inform her employer of the conduct. AG ¶¶ 16 (a) and (e)(1) are raised.

Guideline E contains factors that can mitigate disqualifying conduct. The following conditions under AG ¶ 17 are relevant:

(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; and

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

Applicant's failure to list her marijuana use cannot be considered minor. However, it occurred seven years ago, and is not recent. It came to light when she volunteered to undergo a polygraph, and told the polygrapher about the 2006 marijuana incident before beginning the test. She subsequently was granted her security clearance. On her latest security clearance application in 2013, she disclosed her marijuana use. The behavior was isolated, occurring once in the more than two decades she has held a security clearance.

The record evidence supports a finding of Applicant's trustworthiness. She was candid, credible, and straightforward in her testimony. The record contains no evidence of alcohol abuse, financial delinquencies, gambling, or other negative behavior. On the contrary, numerous character references attest to Applicant's good character, strong family values, and hard work. Given the isolated nature of the events in question, and their distance in time, it is unlikely they will recur, and they do not cast doubt on Applicant's reliability and trustworthiness. AG ¶ 17(c) applies.

Applicant disclosed her drug use to her husband and to her daughters several years ago. She wished to impress on her daughters the ramifications of illegal drug use. Her coworkers, colleagues, and supervisor are aware, and Applicant is not vulnerable to exploitation, manipulation, or duress. AG ¶ 17(e) applies.

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the applicant's security eligibility by considering the totality of an applicant's conduct and all the circumstances. An 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guidelines, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant admits her poor judgment when she allowed her boyfriend to blow marijuana smoke into her mouth, especially in light of her holding a security clearance at the time. However, the event was a single misstep in Applicant's otherwise stable and upstanding life. Applicant is a mature and educated wife and mother. The events in question occurred seven to eight years ago. Applicant has not engaged in marijuana use before or since, and credibly testified that she has no intent to do so in the future. She was forthcoming with the polygrapher and on her 2013 security clearance application. She has revealed the events to others, and particularly wanted to inform her daughters, to teach them of the negative consequences of such actions.

Applicant's educational achievements, professional accomplishments, and consistently laudatory performance evaluations, as well as the character references from her longstanding friends and colleagues, underscore that her admitted lapse in judgment was an aberration. She demonstrated her dedication to U.S. interests not only with her longstanding work for defense contractors in the United States, but also when she spent eight years overseas supporting U.S. military exercises.

A fair and commonsense assessment of the available information shows Applicant has satisfied the doubts raised about her suitability for a security clearance. For these reasons, I conclude she has mitigated the security concerns arising from the cited adjudicative guidelines.

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 as follows:

Paragraph 1, Guideline H:	FOR APPLICANT
Subparagraphs 1.a – 1.b	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a – 2.b	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is granted.

RITA C. O'BRIEN
Administrative Judge