



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



In the matter of:)
)
) ISCR Case No. 14-00710
)
Applicant for Security Clearance)

Appearances

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

10/20/2014

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, the Government's File of Relevant Material (FORM), and Applicant's Response, I conclude that Applicant has not mitigated the security concerns raised under the personal conduct guideline. Accordingly, her request to retain her security clearance is denied.

Statement of the Case

On April 25, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) (Item 1), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006. The SOR listed security concerns addressed in the Directive under Guideline E (personal conduct) of the AG. In her May 12, 2014 Answer to the SOR, Applicant admitted the two allegations in the SOR, and requested a decision without a hearing. (Item 3)

Department Counsel for the Defense Office of Hearings and Appeals (DOHA) prepared a presentation of the Government's case in a FORM dated July 10, 2014.¹ It contained the Government's argument and five documents (Items 1-5) in support of its preliminary decision to deny Applicant's request for a security clearance. Applicant received the FORM on July 23, 2014. She failed to submit a response to refute or mitigate the allegations in the SOR. The case was assigned to me on October 9, 2014.

Findings of Fact

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

Applicant is 22 years old, single, with no children. She completed a bachelor's degree in 2013. In September 2013, she began her current position of associate software engineer with a defense contractor. This is her first application for a security clearance. (Item 4)

The SOR alleges that Applicant used marijuana in summer 2013. (Item 1) In her Answer, she explained that she used it once, because her boyfriend suggested it, and because she wanted to relieve pain she was experiencing from a biopsy. She experienced an anxiety attack when she used it, and decided she did not want to use it again. She stated that this was her only use of marijuana. (Items 3, 5)

About three months later, in October 2013, Applicant completed her security clearance application. Section 23 concerned illegal drug use, and asked, "In the last seven years, have you illegally used any drugs or controlled substances?" Applicant answered "No." (Item 4)

In January 2014, Applicant met with a DOD investigator as part of her security investigation.² She disclosed her marijuana use, explaining that she took two puffs when her boyfriend encouraged her to try it. She said she did not report this use on her security clearance application because it had not been recorded anywhere; she was ashamed of it; she thought listing her marijuana use would indicate she had been arrested; and she thought she would not be granted a security clearance if she disclosed it. (Item 5)

However, in her May 2014 Answer to the SOR, Applicant stated that she did not answer "Yes" to the drug question because she was uncertain about the illegality of her marijuana use as "[i]t was decriminalized in [state], where the incident occurred." She also said,

¹ See Directive, Enclosure 3, Section E3.1.7.

² DOHA provided Applicant with a copy of the summary of her January 15, 2014 security interview with an authorized DOD investigator. She was asked to review the contents and correct any inaccuracies. She made no changes or corrections, and on March 21, 2014, she adopted the summary as accurately reflecting her interview. (Item 5)

I believed that the single instance where I used marijuana did not constitute as [sic] an illegal act. In [state], the use of cannabis is quantified as only a misdemeanor. Due to this, I was inclined to answer “no” to this question because this act was not criminal or illegal according to my understanding. (Item 3)

Applicant's statement indicates that sometime after she had her security interview, she discovered marijuana use was misdemeanor-level criminal conduct. She also states that she believed a misdemeanor is not illegal conduct, and therefore, did not fall under the illegal drug use described in the security clearance application.

Policies

Each security clearance decision must be a fair, impartial, 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.³ 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 when 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 Guideline E (personal conduct).

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁴ 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 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.⁵ 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 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

³ Directive. 6.3.

⁴ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵ See *Egan*, 484 U.S. at 528, 531.

compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.⁶

Analysis

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.

The following disqualifying conditions are relevant under AG ¶ 16:

(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. . .

Disqualifying condition ¶ 16(a) involves a knowing and deliberate decision not to disclose relevant information on a security clearance application. When Applicant completed her application in October 2013, she did not disclose her marijuana use, which occurred three months earlier. In her security interview, she stated she concealed her drug use because she knew it had not been documented and therefore, presumably, she believed it could not be discovered by the government. She also hid the fact because she was ashamed, and because it might prevent her from obtaining a security clearance. It is clear from her statements that Applicant made a knowing and conscious choice to conceal the information. AG ¶¶ 16(a) and (e) apply.

The following mitigating conditions under AG ¶ 17 are relevant:

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

⁶ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

(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.

AG ¶ 17(e) applies because Applicant has disclosed the illegal conduct and she is unlikely to be vulnerable to exploitation based on her drug use. However, as to AG ¶ 17(a), there is no evidence that Applicant made efforts to change or correct her answer on the application during the security clearance process. Although she disclosed her marijuana use to the DOD investigator during her security interview, the Appeal Board has held that subsequent honesty at an interview does not negate the security implications of initial dishonesty on security clearance applications.⁷ AG ¶ 17(a) does not apply.

AG ¶ 17(c) also cannot be applied. Applicant's failure to be candid during her security clearance investigation is not minor: She concealed material and relevant information from the Government. Her actions undermine the security clearance process, which depends in part on honest self-reporting by applicants. Her intentional decision to hide her illegal drug use reflects poorly on her reliability and judgment. Moreover, Applicant provided different reasons for the concealment during her security interview and in her Answer to the SOR. Her May 2014 Answer is the first time she claimed that she failed to disclose because of her uncertainty about the illegality of her conduct. Her explanation is further undermined because she states that marijuana use has been decriminalized in her state, but then explains that it is considered a misdemeanor, which in fact, constitutes criminal conduct.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited Guideline. I have also reviewed the record before me in the context of the whole-person factors listed in 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

⁷ ISCR Case No.02-23073 at 3 (App. Bd. Mar 20, 2004).

for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Applicant's lack of marijuana use since 2013 is a positive sign. However, it is outweighed by her more recent negative conduct: her falsification of her security clearance application in October 2013. Moreover, Applicant undermined her credibility by providing varying reasons for her falsification in her security interview and in her Answer to the SOR. Applicant's conduct demonstrates a willingness to place her own needs before the Government's need for honesty.

Overall, the record evidence fails to satisfy the doubts raised about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from the cited adjudicative guideline.

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 E:	AGAINST APPLICANT
Subparagraphs 1.a – 1.b	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 allow Applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge