



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 14-01089
)
Applicant for Security Clearance)

Appearances

For Government: Candace L. Garcia, Esquire, Department Counsel
For Applicant: *Pro se*

December 9, 2014

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP), on August 13, 2013. (Item 4.) On May 5, 2014, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines J (Criminal Conduct), H (Drug Involvement), and E (Personal Conduct) concerning Applicant. (Item 1.) The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on June 6, 2014, and requested a decision by an administrative judge without a hearing. (Item 3.) Department Counsel submitted the Government’s written case (FORM) to Applicant on September 11, 2014. The FORM contained six documents. Applicant acknowledged receipt of the FORM on September 15, 2014. She was given 30 days from receipt of the FORM to submit any additional documentation. Applicant elected not to submit any additional information. The case was assigned to me on November 20, 2014. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 25 and single. She is employed by a defense contractor and seeks to obtain a security clearance in connection with her employment.

Paragraph 1 (Guideline J, Criminal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because she has engaged in criminal activity that casts doubt on her judgment, reliability and trustworthiness.

Applicant admits that she was arrested for Driving Under the Influence of Alcohol (DUI), and Hit and Run Property Damage on September 22, 2011. She plead guilty to the DUI charge on June 27, 2012, and was sentenced to three years court probation, ordered to attend a six-month DUI class, placed on a work program and fined. Her probation is due to expire in June 2015. (Items 3, 4, 5, and 6.)

Paragraph 2 (Guideline H, Drug Involvement)

The Government alleges in this paragraph that Applicant is ineligible for clearance because she has used and purchased marijuana.

Applicant admits that she used marijuana on an occasional basis from August 2006 through September 2011. She also purchased marijuana during the same period. Applicant estimates that she has used marijuana approximately 21 times. She has not used marijuana for approximately three years and states that she will not use marijuana in the future. (Items 2, 4, and 5.)

Paragraph 3 (Guideline E, Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because she has made false statements to the Department of Defense during the clearance screening process. The Government also alleges that the facts set forth under Paragraphs 1 and 2, above, are also cognizable under this paragraph.

Applicant filled out an e-QIP on August 13, 2013. (Item 4.) Section 23 of Item 4 asks Applicant if, in the last seven years, she had been involved in the illegal use or purchase of drugs or controlled substances. Applicant answered each question, "No." These were false answers to material questions concerning Applicant's drug background.

She stated in her Answer, "I was nervous to give a full account of my past due to my need to having a security clearance for my position. While speaking with the investigator I asked her questions around these thoughts and thought it would be better to be honest about everything."

Applicant provided no evidence concerning the quality of her professional performance, the level of responsibility her duties entail, or her track record with respect to handling sensitive information and observation of security procedures. She submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing.

Policies

Security clearance decisions are not made in a vacuum. When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used as appropriate 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 AG ¶ 2 describing the adjudicative process. The administrative judge's over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, "Any 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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. Security clearance decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or

inadvertently fail to protect or 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination 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

Paragraph 1 (Guideline J, Criminal Conduct)

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations.

The following disqualifying conditions under AG ¶ 31 apply to this case:

- (a) a single serious crime or multiple lesser offenses; and
- (d) individual is currently on parole or probation.

The following mitigating conditions under AG ¶ 32 have also been considered:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment; and
- (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

It has been three years since Applicant’s arrest for Driving Under the Influence. As stated, she remains on probation for another six months. Other than Applicant’s statements that she will not engage in such conduct in the future, there is no evidence showing how mitigating conditions ¶ 32 (a) and (d) apply to this case. This allegation is found against Applicant.

Paragraph 2 (Guideline H - Drug Involvement)

The security concern relating to the guideline 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. 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; Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

I have considered the disqualifying conditions under AG ¶ 25 and especially considered the following:

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

I have studied all of the mitigating conditions under AG ¶ 26 and especially considered the following:

- (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; (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.

As stated, Applicant has admitted using marijuana about 21 times between 2006 and 2011. Other than stating the span of time, Applicant offered no evidence that would support mitigation under AG ¶¶ 26 (a), or (b). Under the particular facts of this case that is insufficient. Paragraph 2 is found against Applicant.

Paragraph 3 (Guideline E - Personal Conduct)

The security concern relating to Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty or unwillingness to comply with rules or 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.

I have examined the disqualifying conditions under AG ¶ 16 and especially considered the following:

(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

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

The following mitigating condition under AG ¶ 17 may apply to the facts of this case:

(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.

Applicant's falsification of her e-QIP occurred barely over a year ago. She admits that the falsification was an intentional act on her part, because she needed a security clearance to get her job and was afraid that her drug use would preclude her getting one. Applicant states that she would not lie in the future, but the dearth of mitigating information of any type makes it extremely difficult for me to find that she is a credible person.

Her criminal conduct and drug use, when combined with the falsification, confirm that she is not eligible for a clearance at this time. Paragraph 3 is found against Applicant.

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 the relevant circumstances. 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. The administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. The discussion under Guidelines J, H and E, above, applies here as well. Applicant has a recent history of criminal conduct, drug use and falsification of a government questionnaire. She failed to provide sufficient mitigating information to overcome the adverse inference arising from her conduct.

Under AG ¶ 2(a)(3), her conduct is recent and continuing. I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I also cannot find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); or that there is no likelihood of continuation or recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her criminal conduct, drug involvement and personal conduct. Accordingly, the evidence supports denying her request for a security clearance.

Formal Findings

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

Paragraph 1, Guideline J:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Subparagraph 3.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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS
Administrative Judge