



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



In the matter of:

-----

Applicant for Security Clearance

)  
)  
)  
)  
)  
)

ISCR Case No. 14-03175

**Appearances**

For Government: Stephanie Hess, Esquire, Department Counsel

For Applicant: *Pro se*

05/07/2015

**Decision**

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant mitigated the security concerns regarding her use of drugs and personal conduct. Eligibility for access to classified information is granted.

**History of Case**

On August 28, 2014, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DoD adjudicators could not make the affirmative determination of eligibility for a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order 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 (AGs) implemented by DoD on September 1, 2006.

Applicant responded to the SOR on October 13, 2014, and requested a hearing. The case was assigned to me on February 5, 2015, and was scheduled for hearing on

March 24, 2015. At the hearing, the Government's case consisted of three exhibits (GE 1-3). Applicant relied on one witness (herself) and three exhibits (AEs A-C). The transcript (Tr.) was received on April 2, 2015.

### **Summary of Pleadings**

Under Guideline H, Applicant allegedly (a) used marijuana from 2004 to at least July 2012 and (b) used marijuana while holding a position of trust. No further details are provided.

Under Guideline E, applicant allegedly (a) falsified her public trust application of August 2005 by answering "no" to her use of drugs within the past year; (b) falsified her public trust application of August 2010 by answering "no" to her use of drugs within the past year; and (c) used drugs while holding a position of trust.

In her response to the SOR, Applicant admitted using drugs for several years, but denied using drugs while holding a position of trust. She admitted to failing to list her marijuana use in her 2005 public trust application based on her fear of losing her job and on the advice of her manager. She claimed she has since matured as an individual and professional and was proactive in volunteering her drug use when initially questioned by an investigator who came to interview her. She denied falsifying her 2010 public trust application and claimed her omissions are not a reflection of her character. She claimed she had excellent reviews from her peers who attest to her outstanding professionalism and ethics and cited the position she holds on her employer's leadership board.

### **Findings of Fact**

Applicant is a 31-year-old associate of a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

#### **Background**

Applicant married in April 2010 and has two children, ages two years and six months old. (GEs 1-3; Tr. 56) She earned a bachelor of science degree from a respected university in May 2005. (GEs 1-3) While in college, she captained her school's gymnastics team. (Tr. 36 ) She claimed no military service. (GEs 1-3)

#### **Drug history**

Between 2004 and 2012, Applicant experimented with marijuana on six or seven occasions during vacation visits to her older sister's home in another state. (Tr. 57-59) She assured she did not use marijuana in 2005 and 2010 while holding a public trust position. She attributed her use of marijuana to immaturity and pressures from her older sister. (Tr. 49) Her assurances regarding her limited drug use are credible and accepted.

Applicant was aware that her use of illegal drugs violated company policy. (Tr. 51-52) She last used marijuana in Summer 2012 while on maternity leave with her older sister. She has matured, is married with two children, and has no intention of ever using illegal drugs again. (Tr. 51-53) Although Applicant still associates with her older sister, her older sister has since married (in 2008) and no longer uses marijuana in Applicant's presence. (AE A; Tr. 55)

### **Drug use omissions in public trust applications**

Asked to complete a public trust application in August 2005, Applicant omitted her marijuana use within the previous year (i.e., between at least May 2004 and May 2005). (GE 3) She attributed her omissions to the advice she received from her company manager, but acknowledged she falsified her application. (Tr. 46-47) In an ensuing interview with an agent from the Office of Personnel Management (OPM) in 2005, she volunteered her prior marijuana use without being confronted. (Tr. 47-49)

Applicant was asked to complete another public trust application in August 2010. (GE 2) In this application, she denied any drug use within the previous year. (Tr. 46) For lack of any probative evidence to challenge her assertions, her explanations and demonstrated overall honesty and trustworthiness entitle Applicant to favorable inferences regarding her drug use denials.

When Applicant was afforded an opportunity to disclose her prior drug use within the preceding seven years in a March 2013 security clearance application (e-QIP) she completed, she truthfully acknowledged her prior marijuana use. (GE 1) Considering all of the circumstances surrounding Applicant's 2010 omissions, her explanations are accepted.

### **Endorsements**

Applicant is well-regarded by her managers and colleagues who have worked with her on company projects over the past three years. They credit her with honesty and integrity, and as a team member who consistently models ethical behavior and adheres to their firm's professional and individual core values. (AE A; Tr. 32-37)

Friends who have known Applicant for a number of years also offer their strong support of Applicant in her clearance application. (AE A) One of her friends (a co-captain with Applicant on their college gymnastics team) credited Applicant with adherence to the principles of confidentiality, trustworthiness, and honesty. (AE A) All three of her friends described Applicants as dedicated, responsible, and a good mother to her two boys. (AE A) Applicant's husband stressed her honesty and work ethic who works to improve herself every day. He praised the integrity she has shown to himself and their children in their marriage. (AE A)

Applicant has earned excellent personnel evaluations. (AE B; Tr. 37-45) Her evaluations reveal fully consistent ratings for core business values of client service, entrepreneurship, excellence, teamwork, and diversity. (AE B)

In her self-assessment, Applicant described herself as fully committed to her core values of integrity, trustworthiness, dependability. (AE C; Tr. 41-43) She identified business areas she excelled in, to include successful delivery of high quality products, teamwork, entrepreneurship skills, and effective working with diverse sets of team members. (AE C)

## **Policies**

The AGs list guidelines to be used by administrative judges in the decision-making process covering security clearance cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. The AGs include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns." They must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the revised AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person.

The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. The following AG ¶ 2(a) factors are pertinent: (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.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

## **Drug Involvement**

*The Concern:* 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 AG ¶ 24.

## **Personal Conduct**

*The Concern:* Conduct involving questionable judgment, untrustworthiness, unreliability, 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 ¶ 15.

## **Burden of Proof**

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. "[S]ecurity-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

## **Analysis**

Security concerns are raised about Applicant's use of marijuana over a period of several years and her omissions of her marijuana use in the public trust applications she completed in 2005 and 2010.

## **Drug use concerns**

On the strength of the evidence presented, two disqualifying conditions (DC) of the AGs for drug abuse are applicable: DC ¶ 25(a), “any drug abuse,” and DC ¶ 25(c), “illegal possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.” Judgment concerns exist over Applicant’s past drug use. She has some recurrent history of marijuana use on a limited scale and less than three years of demonstrated abstinence.

Considering the isolated nature of Applicant’s most recent marijuana use (2012), enough time has elapsed to facilitate safe predictable judgments that she will not return to illegal drug use in the foreseeable future. Pertinent mitigating conditions (MC) covered by AG ¶ 24 are available to Applicant. MC ¶ 24(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 MC ¶ 24(b), “a demonstrated intent not to use any drugs in the future, such as (3) an appropriate period of abstinence,” apply to Applicant’s limited use of marijuana.

Prior to her isolated use of marijuana in Summer 2012, Applicant had not used marijuana since experimenting with the drug while visiting her sister during vacations. With so little recurrent history of marijuana use, and with so much time that has elapsed since her last use in 2012 (i.e., almost three years), it is unlikely that she will resume her use of the substance in the foreseeable future.

Applicant is credited with good judgment and reliability by her manager and colleagues who have worked closely with Applicant for a number of years. She has exhibited increased maturity in her work and personal life. Moreover, Applicant’s older sister, with whom she shared marijuana on family vacations, has since married and no longer uses marijuana in Applicant’s presence. Safe predictable judgments, accordingly, can be made about Applicant’s ability to avoid recurrent drug involvement.

From a whole-person perspective, Applicant has established independent probative evidence of her limited use of marijuana and unlikelihood of ever resuming her use of the substance. She has provided endorsements from her supervisors and colleagues (past and present), close friends, and her husband to soften or mitigate any of the drug and judgment concerns associated with her past use of marijuana. Applicant’s own acknowledgment of poor judgment and disassociation of contacts with persons who used marijuana in her presence help to reinforce favorable conclusions about her overall judgment, reliability, and trustworthiness.

Taking into account all of the facts and circumstances surrounding Applicant’s isolated drug use and judgment lapse, Applicant mitigates security concerns related to her drug use. Favorable conclusions are warranted with respect to the allegations covered by subparagraphs 1.a-1.b of Guideline H.

## **Personal conduct concerns**

In the process of completing a public trust application in August 2005, Applicant omitted her experimental use of marijuana between May 2004 and May 2005. Applicant's "no" answer was intentional and was based on the advice she received from her company manager. She answered "no" to any past use of marijuana within the previous year again when she completed a public trust application in August 2010. Because of her uncertainty over whether she used marijuana during the 2009-2010 time period, she attributed this omission to inadvertence and oversight. For lack of evidence of whether Applicant used marijuana in 2009-2010, no reasonable conclusions of intentional omission can be drawn against Applicant. To her credit, she fully disclosed her past marijuana use in 2012 when completing her recent e-QIP in March 2013.

Security concerns over Applicant's judgment, reliability and trustworthiness are raised under Guideline E as the result of her alleged omissions of her marijuana use in the public trust applications she completed in 2005 and 2010. By her statements and actions, Applicant placed in issue her judgment and fiducial commitment to safeguarding classified information entrusted to her.

One of the disqualifying conditions covered by Guideline E are applicable. DC ¶ 16(a), "deliberate omission, concealment, or falsification of relevant facts to 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." DC ¶ 16(a) may be considered in evaluating Applicant's 2005 and 2010 public trust applications, her ensuing OPM statements, her drug-use disclosures in the e-QIP she completed in 2013, and her hearing testimony.

Applicant's "no" answer in her 2005 public trust application regarding her experimental use of marijuana on several occasions, while intentional, was based on the errant advice of her company manager. Due diligence on her part should have prompted her to inquire further whether the question required an affirmative response, given her understanding at the time of her company's policy on the use of illegal drugs. Certainly, Applicant's negative response, lacked any due diligence research or investigation on her part. This, she freely admitted and expressed profound regrets for not being truthful when first asked about her past drug use.

Mitigation is available to Applicant to correct any judgment lapses associated with her negative responses made in her 2005 public trust application when questioned about her past use of illegal drugs. Applicant's volunteered corrections meet the prompt, good-faith requirements of MC ¶ 17(a), "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts," as well as the infrequent, unique circumstances requirements of MC ¶ 17(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." Both MC ¶ 17(a) and MC ¶ 17(c) of Guideline E apply to Applicant's situation.

In evaluating all of the circumstances surrounding Applicant's withholding of material information about her past use of marijuana in the public trust application she completed in 2005 and her corrections and clarifications in her ensuing OPM interview and hearing testimony, her explanations and timing of her corrections are sufficient to convincingly mitigate the deliberate falsification allegations. Questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations, are each core policy concerns of the personal conduct guideline (AG ¶ 15).

Addressing the alleged omissions of Applicant's past drug use in her 2010 public trust application, Applicant denied any falsification of her application when she answered "no" to the question inquiring about any prior drug use within the previous year. She was vehement about not using marijuana the previous year. Absent any probative evidence to credibly challenge her assurances, no inferences could be drawn of her withholding information about her drug use in this 2010 application. Applicant's explanations under the circumstances are entitled to acceptance.

From a whole-person standpoint, the evidence is sufficient to demonstrate that Applicant has mounted responsible, good-faith efforts to provide accurate background information to the Government in her OPM interview and ensuing public trust and security clearance applications she completed. Any judgment lapses demonstrated in her completion of her 2005 public trust application are more than off-set by the positive judgment impressions she has forged with her managers, colleagues, and friends.

Applicant's strong employment relationships she has developed with her employer have been very productive and rewarding for her and were instrumental in demonstrating her overall honesty, reliability and trustworthiness necessary to meet security eligibility requirements. She has forged solid impressions on her manager and colleagues for her exhibited honesty and trustworthiness and adherence to her company's core values.

In making a whole-person assessment, careful consideration was given to the respective burdens of proof established in *Egan (supra)*, the AGs, and the facts and circumstances of this case in the context of the whole person. Favorable conclusions warrant with respect to the allegations covered by subparagraphs 2.a-2.c.

### **Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE H: (DRUG INVOLVEMENT):	FOR APPLICANT
Sub-paras. 1.a-1.b:	For Applicant
GUIDELINE E (PERSONAL CONDUCT):	FOR APPLICANT
Sub-paras. 2.a-2.c:	For Applicant



### **Conclusions**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

---

Roger C. Wesley  
Administrative Judge

