



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



In the matter of:)
)
) ISCR Case No. 14-03601
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: Barry M. Hartman, Esq.

03/31/2015

Decision

RIVERA, Juan J., Administrative Judge:

Applicant's history of drug-related conduct, in particular, her use of marijuana after she was granted eligibility for a position of trust, continues to raise security concerns. Her lack of judgment and unwillingness to comply with the law raise questions about her reliability, trustworthiness, and ability to protect classified information. Clearance denied.

Statement of the Case

Applicant submitted her most recent security clearance application (SCA) on May 1, 2013. The Department of Defense (DOD) issued her a Statement of Reasons (SOR) alleging security concerns under Guideline H (drug involvement) on August 8, 2014.¹ Applicant answered the SOR on October 8, 2014, and requested a hearing before an administrative judge. The case was assigned to me on December 5, 2014. The Defense Office of Hearings and Appeals (DOHA) issued the notice of hearing on January 27, 2015, scheduling a hearing for February 2, 2015.

¹ The DOD acted 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* (Directive) (January 2, 1992), as amended; and the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.

At the hearing, the Government offered two exhibits (GE 1 and 2). Applicant testified and submitted four exhibits (AE 1 through 4). All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on February 10, 2015.

Findings of Fact

Applicant admitted all of the SOR allegations, with explanations. Her admissions are incorporated as findings of fact. After a thorough review of the evidence, including her testimony and demeanor at hearing, I make the following additional findings of fact:

Applicant is a 28-year-old employee of a defense contractor. She attended college and received a bachelor's degree in business administration (accounting major) in 2008. She has never been married and has no children.

Applicant started working with her current employer, a government contractor, after graduating from college in October 2008. When Applicant was inprocessing, she was advised of her employer's policy against the use of illegal drugs by its employees. She submitted a Questionnaire for Public Trust Positions (SF85P) on March 27, 2009. In response to Section 21 (Illegal Drugs), Applicant indicated that she illegally used marijuana occasionally between March 2003 and May 2008. Shortly thereafter, she was granted eligibility to a public trust position.

Applicant submitted a SCA on May 1, 2013. She was candid and forthcoming completing her SCA and disclosed her prior history of illegal marijuana use. Applicant disclosed that she illegally used marijuana between March 2006 and March 2013. She started to use marijuana in college and her use continued after college. She characterized her use of marijuana as recreational and infrequent. She admitted she illegally used marijuana in a number of occasions, but was not sure of the number of times she used marijuana. In a statement provided in 2013, Applicant indicated that she intended to continue to use marijuana in the future, if presented with the opportunity. (Tr. 16)

In her answer to the SOR, Applicant claimed she used marijuana no more than 10 times between 2009 and April 2013. She described her use of marijuana as "purely recreational, and in limited private social settings". Her last use of marijuana was in April 2013. She denied using any other illegal drugs. Applicant averred that she no longer intends to use marijuana in the future. Her resolve to not use any illegal drugs was reinforced by the suicide of a friend's fiancé who was addicted to cocaine. Applicant submitted a statement of intent with automatic revocation of clearance for any violation to show her resolution to not abuse any drugs in the future.

Applicant testified that she has not used marijuana in the last two years. She claimed she has changed her lifestyle to avoid the environments where illegal drugs are used. Applicant has continued to associate with her college and after-college marijuana-using friends. She avoids the illegal drug-using environments by no longer meeting her friends in private places where they are likely to use marijuana. Instead, she only visits

with her illegal drug-using friends in public places where she knows marijuana will not be used.

Applicant expressed regret and embarrassment for the irresponsibility she demonstrated with her illegal drug use. She knew that the use of marijuana was illegal and frowned upon by her employer. She now recognizes that as an adult and a professional she must alter her illegal drug-related behavior permanently.

Applicant considers herself to be trustworthy, reliable, and dependable. She highlighted that she has been candid, honest, and forthcoming during the security clearance process. She noted her performance reviews, her mentoring and leadership abilities, her technical knowledge, and that she is a team leader. She has received outstanding ratings through her company's peer and supervisor's feedback review system. Applicant believes that these factors show her rehabilitation efforts, her current maturity, commitment, and good judgment.

Policies

Eligibility for access to classified information may be granted "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their 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. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Guideline H, Drug Involvement

AG ¶ 24 articulates the security concern for 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.

Between March 2006 and March 2013, Applicant illegally used marijuana. She used marijuana knowing it constituted a criminal offense to do so. She used marijuana after she was hired by her current employer, knowing her employer had a policy against it. She used marijuana after she was granted eligibility to hold a position of trust in 2009, knowing that her illegal use of marijuana could adversely impact her eligibility to hold a position of trust.

AG ¶ 25 describes conditions related to drug involvement that could raise a security concern and are applicable in this case:

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

AG ¶ 26 provides two potentially applicable drug involvement mitigating conditions:

- (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.

I find that none of the Guideline H mitigating conditions fully apply. Applicant's most recent marijuana use occurred in early 2013. As such, her illegal drug-related behavior could be considered not recent. However, Applicant illegally used marijuana after she started working for her employer and with full knowledge of her employer's policy against illegal drug use. Additionally, she was placed on notice of the Government's security concerns about the use of illegal drugs when she completed her SF85P. Notwithstanding, she illegally used marijuana during a four-year period after she was granted eligibility for a position of trust.

I considered Applicant's age and maturity at the time of the offenses. I also considered her efforts to rehabilitate herself, to show she has matured, and that she is unlikely to engage in similar misconduct. I gave Applicant credit for being truthful and candid during the security clearance process. On balance, I find that not enough time has transpired since Applicant's last use of marijuana to fully establish Applicant's rehabilitation and that her illegal drug use is not likely to recur. At this time, her illegal drug use continues to cast doubt on her current reliability, trustworthiness, judgment, and her ability to comply with the law, rules and regulations.

Applicant promised to never use illegal drugs in the future. Applicant was aware of the criminal prohibition against the illegal use of drugs, and of the adverse consequences to her ability to hold a position of trust, a security clearance, or her job if she illegally used drugs. That did not stop her from using marijuana. Applicant's illegal drug use is a violation of the trust placed in her by her employer. She also continues to associate with her illegal marijuana-using friends.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c).

Applicant is a 28-year-old employee of a government contractor. Her history of drug-related criminal conduct, in particular her use of marijuana after she was hired by her employer, continues to raise security concerns. Considering the evidence as a whole, Applicant's lack of judgment and unwillingness to comply with the law raise questions about her reliability, trustworthiness, and ability to protect classified information.

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:	Against APPLICANT
Subparagraphs 1.a - 1.c:	Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance denied.

JUAN J. RIVERA
Administrative Judge