



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 14-04274  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Philip J. Katauskas, Esq., Department Counsel  
For Applicant: *Pro se*

05/22/2015

**Decision**

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted. Applicant presented sufficient information to mitigate personal conduct security concerns.

**Statement of the Case**

On March 19, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. DOD issued Applicant a Statement of Reasons (SOR), dated November 14, 2014, detailing security concerns for personal conduct under Guideline E. 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 (AG) effective in the DOD on September 1, 2006.

Applicant answered the SOR on January 13, 2015. She admitted two and denied two of the four allegations. Department Counsel was prepared to proceed on March 19, 2015, and the case was assigned to me on March 25, 2015. DOD issued a notice of hearing on March 27, 2015, scheduling a hearing for April 15, 2015. I convened the hearing as scheduled. The Government offered three exhibits that I marked and admitted into the record without objection as Government Exhibits (GX) 1 through 3. Applicant testified, and submitted one exhibit that I marked and admitted into the record without objection as Applicant Exhibit (AX) A. I received the transcript of the hearing (Tr.) on April 29, 2015.

### **Findings of Fact**

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 41 years old and has been employed as an insulator for a defense contractor since October 2011. She has been recognized by her employer for her contributions to the company's work products. (AX A, Certificate, dated November 7, 2014) She graduated from high school in 1991. Applicant first married in January 1994 and divorced in June 2000. She married again in August 2004 but separated in August 2009. There were no children from the marriages. (Tr. 10; GX 1, e-QIP, dated March 19, 2013)

Under the personal conduct guideline, the SOR alleges that Applicant was terminated from her employment in May 2011 for receiving a baggie of marijuana at work from a co-worker (SOR 1.a). It was also alleged that she provided false information on her e-QIP by answering "no" to the question asking if in the last seven years she had used an illegal substance (SOR 1.b). She told the OPM investigator that she used marijuana at least five times between November 2010 and May 2011. It was further alleged that on the same e-QIP she answered "yes" to a question concerning illegal purchase, receiving, or handling of illegal drugs but noted that the marijuana was meant for someone else when it was intended for her personal use (SOR 1.c). The last allegation was that she failed to file her federal and state tax returns for tax year 2011. (SOR 1.d)

Applicant was having personal and debt problems stemming from a failed marriage in late 2010. She had low self esteem. She smoked marijuana four or five times from November 2010 until May 2011, as a means of coping with her problems. In May 2011, Applicant received a small amount of marijuana from a co-worker at work for her personal use. The transaction was seen by security personnel and recorded by security cameras. Applicant was immediately confronted by the security personnel and given the option of resigning at that time or face termination proceedings. Applicant decided to immediately resign from her position. She denied SOR allegation 1.a because the allegation stated she was terminated when in fact she resigned.

Applicant admitted to the purchase and use of marijuana. She has not used marijuana since May 2011. It was a wake-up call for her to be caught accepting marijuana and having to resign from her job. She has no intent to use marijuana in the future. (Tr. 17-21, 25-27)

Applicant's security clearance application showed that she answered "no" to question 23 on the e-QIP asking if in the last seven years she used any illegal substance. Applicant's application has an answer of "yes" to the next question asking if she had been involved in the purchase, manufacture, cultivation, trafficking, transfer or receiving of an illegal substance. In further response to this question, the application noted that she was accused of receiving marijuana at work in May 2011 and resigned from her employment. There was also a comment that she accepted the package for someone else.

Applicant denied deliberately concealing her marijuana use and blaming someone else for her receiving the illegal substance. She had assistance in completing the form from an individual at her employment. The individual asked her questions corresponding to questions on the security clearance application, and she orally provided the answers to the person assisting her. The individual typed the answers on the computerized application. Applicant did not read the answers on the form carefully but merely signed the signature page. There was obviously confusion and a lack of communication between Applicant and the person assisting her, resulting in incorrect information entered on the security clearance application. (Tr. 21-25, 29-31)

Applicant admitted that she failed to file her 2011 federal and state tax return at the time required. She did not have sufficient funds withheld to pay the taxes that she owed. She filed her 2011 tax returns with her 2012 tax returns and paid the taxes owed. She is current with her taxes. (Tr. 23-24, 31-33)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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 the adjudicative process. The administrative judge's overarching 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.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny 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.

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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking a favorable security 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. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to 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.

## **Analysis**

### **Personal Conduct**

Personal conduct is a security concern because conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified and sensitive information. (AG ¶ 15) Personal conduct is always a security concern because it asks whether the person's past conduct justifies confidence the person can be trusted to properly safeguard classified or sensitive information.

The SOR alleges security concerns based on personal conduct. Applicant resigned from her job after being observed by security personnel receiving marijuana at work (SOR 1.a). She also did not timely file her federal and state tax returns for 2011 (SOR 1.d). These offenses go directly to questions concerning her reliability, trustworthiness, good judgment, and willingness to comply with rules and regulations, and raise the Personal Conduct Disqualifying Condition AG ¶ 16(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).

17: I considered the following Personal Conduct Mitigating Conditions under AG ¶

(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 is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment); and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken positive steps to alleviate the stressors, circumstances, or factors that caused the untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Applicant resigned from her job because she received marijuana for her personal use at work. Applicant was using marijuana at the time because of problems in her life. She admitted to using the illegal substance four or five times from November 2010 to May 2011. After losing her job for receiving marijuana at work, Applicant stopped using marijuana and she has not used marijuana since May 2011. While there is no "bright line" rule for determining when conduct is not recent or sufficient time has passed since the incidents to determine if past conduct affects an individual's present reliability and trustworthiness, there must be a determination based on a careful evaluation of the totality of the evidence. If the evidence shows a significant period of time has passed without evidence of drug involvement, there must be an evaluation whether that period of time demonstrates changed circumstances or conduct sufficient to indicate a finding of reform or rehabilitation. Applicant realized the problems associated with her use of marijuana and has not used for over four years. Four years of abstinence set against using only four or five times is sufficient time to indicate a change of circumstance or conduct that she has reformed and will no longer use illegal drugs. Her previous use of marijuana and her job termination for receiving marijuana at work no longer casts doubt on her current reliability, trustworthiness, or good judgment.

Applicant admitted that she did not timely file her federal and state tax returns for 2011 because she did not have the funds to pay the taxes she owed. She filed the 2011 returns in 2012 and paid the taxes owed. Applicant could have filed the tax returns and asked for an installment plan to pay the taxes. She did not but she also did not ignore her obligation to file tax returns, but filed them the following year and paid the taxes. Applicant mitigated the personal conduct security concerns for termination from employment for receiving marijuana at work, and for the failure to timely file her 2011 tax returns.

The SOR also alleges security concerns for falsifications on the security clearance application. In completing her e-QIP, Applicant answered "no" to using marijuana (SOR 1.b). She listed her termination from work for receiving marijuana, but the reason listed was that she was receiving the marijuana for another person (SOR 1.c). Applicant denied intentional falsification of the security clearance application. Applicant was assisted in completing the security clearance application by personnel

from her employer. Applicant provided information and the other employee typed the responses on the application. Applicant did not read the completed form carefully and completely, but merely signed the signature page. When questioned by the OPM investigator, she was open and candid about her use and receiving marijuana. She admitted to using marijuana four or five times from November 2010 until May 2011. She admitted receiving marijuana at work and immediately resigning her job. She did not state that she received the marijuana for someone else.

While there is a security concern for a deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance, not every omission, concealment or inaccurate statement is a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully with intent to deceive. I find that Applicant did not deliberately fail to provide correct and accurate information on the security clearance application. Her testimony as to how the security clearance application was completed is credible. There was a communication failure between Applicant and the clerk assisting her in completing the application. The fact that Applicant did not read the form before signing it does not indicate that she deliberately falsified the information. Personal Conduct Disqualifying Condition AG ¶16(a) (the deliberate omission, concealment, or falsification of relevant facts from any personal security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security eligibility or trustworthiness, or award fiduciary responsibilities) is not raised. I find for Applicant as to SOR 1.b and 1.c.

### **Whole-Person Analysis**

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

Under AG ¶ 2(c), 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.

