



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)	
)	
-----)	ISCR Case No. 08-03335
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro Se*

September 21, 2009

Decision

MOGUL, Martin H., Administrative Judge:

On February 9, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines E, and H for Applicant. 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant responded to the SOR (RSOR) in writing on March 16, 2009, and requested a hearing before an Administrative Judge. I received the case assignment on April 30, 2009. DOHA issued a Notice of Hearing on June 11, 2009, and I convened the hearing on August 11, 2009, in Las Vegas, Nevada. The Government offered Exhibits 1 through 4, which were received and entered into evidence without objection. Applicant testified on her own behalf, and she submitted no exhibits. At the request of Applicant, the record remained open until August 25, 2009, to allow Applicant to offer post hearing character letters. Five letters were submitted, and have been entered into evidence

without objection collectively as Exhibit A. DOHA received the transcript of the hearing (Tr) on August 19, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In her RSOR, Applicant admitted all of the SOR allegations; 1.a., under Guideline E, and 2.a. through 2.c., under Guideline H. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 53 years old. She is not married, and she has one daughter. Applicant works for a defense contractor, and she seeks a DoD security clearance in connection with her employment in the defense sector.

Paragraph 1 (Guideline E - Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because she exhibited conduct involving questionable judgement, lack of candor, dishonesty or unwillingness to comply with rules and regulations.

1.a. Applicant executed a Security Clearance Application (SCA), on August 10, 2006 (Exhibit 1). Question #24 of the SCA asked since the age of 16 or in the previous seven years, whichever is shorter, had Applicant illegally used any controlled substance? Applicant answered "No" to this question, and she listed no illegal substances. The Government alleges, and the evidence is clear, that Applicant should have included her regular methamphetamine usage which continued until 2001, and was within seven years of her completion of the SCA, and her one time usage in 2003 or 2004, as included and discussed in subparagraph 2.a., below.

At the hearing Applicant testified that she did not list her methamphetamine usage up until 2001, because she thought it had been more than seven years since her last regular usage of methamphetamine. After some testimony in which she equivocated about her memory of her usage in 2003, she conceded that she knew of her one time usage in 2003 or 2004, but she testified, "And the reason I didn't put that one time 'cause, hey, it was one time, it was a bad experience." (Tr at 40-42).

Paragraph 2 (Guideline H - Drug Involvement)

The SOR lists three allegations regarding illegal drug involvement under Adjudicative Guideline H. As stated above, all of these allegations were admitted by Applicant in the RSOR. They will be discussed in the same order as they were listed in the SOR:

2.a. The SOR alleges that Applicant used methamphetamine, with varying frequency, from approximately 1990 to at least 2003 or 2004. At the hearing, Applicant testified that she used methamphetamine from 1990 to approximately 2001, and her usage was about two days a month. She used the methamphetamine to give her energy and to help her with weight loss (Tr at 24-27). After her treatment, discussed in 2.c., below, she testified that she bought a “baggie” in 2003 or 2004, and she only used methamphetamine one additional time, but she became sick as a result of her use. She averred that she has not used it since then (Tr at 31-32).

2.b. The SOR alleges that Applicant purchased methamphetamine. She testified that she purchased the methamphetamine that she used in the form of \$20 “baggies,” or at times \$40 worth of drugs, from people she would see on the street corner, whom she did not know personally (Tr at 28-29).

2.c. The SOR alleges that Applicant sought counseling in approximately 2001, for her methamphetamine use, because she believed she was having a problem with the methamphetamine usage. After meeting with her counselor on two occasions, she was referred to a psychiatrist for further treatment. She was treated by the psychiatrist for one year. In Exhibit 3, Applicant stated that she received counseling “for about 1 year, once a month in 2001.”

Mitigation

As reviewed above, Applicant submitted five character letters from individuals who have known her in different capacities (Exhibit A). All of the letters were very positive in describing Applicant in such terms as “trustworthy, enthusiastic and optimistic.” However, none of individuals who wrote the letters, addressed Applicant’s history of methamphetamine usage. Since it is not clear if any of them were aware of Applicant’s drug usage, I find their recommendations to be of limited value.

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching adjudicative goal is a fair, impartial and common sense 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. 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 applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion as to obtaining 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 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.

Section 7 of Executive Order 10865 provides that decisions shall be “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

Guideline E - Personal Conduct

With respect to Guideline E, the evidence establishes that Applicant furnished to the Government incomplete, untruthful answers regarding the extent of her drug involvement on an SCA that she executed on August 10, 2006. The record is clear that she was aware of her methamphetamine usage in 2003 or 2004, and that she knowingly failed to furnish that information to the Government. Regarding her regular usage that continued to at least 2001, I do not find it credible that she could not remember that her usage was within the seven years before she completed her SCA, particularly since she was receiving treatment every month for one year in 2001, because of her problems with the drug.

The Government relies heavily on the honesty and integrity of individuals seeking access to our nation’s secrets. When such an individual intentionally falsifies material facts or fails to furnish relevant information to a Government investigator, it is extremely difficult to conclude that she nevertheless possesses the judgment, and honesty

necessary for an individual given a clearance. In this case, I conclude that Applicant knowingly and willingly failed to give complete, honest answers regarding her drug usage to the Government.

In reviewing the Disqualifying Conditions (DC) under Guideline E, I conclude that DC 16. (a) applies because of Applicant's "deliberate omission, concealment, and falsification of relevant facts from a personnel security questionnaire, which was used to determine security clearance eligibility." I can not find that any Mitigating Condition (MC) applies in this paragraph.

Applicant's conduct, considered as a whole, exhibits questionable judgement, unreliability, and a lack of candor. I resolve Paragraph 1, Guideline E, against Applicant.

Guideline H - Drug Involvement

With respect to Guideline H, the Government has established its case. Applicant's improper and illegal drug abuse, including the possession, and use for many years of methamphetamine is of great concern, especially in light of her desire to have access to the nation's secrets. Applicant's overall conduct pertaining to her illegal substance abuse clearly falls within Drug Involvement Disqualifying Condition (DC) 25. (a) "any drug abuse" and (c) "illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution."

Based on the Applicant's many years and frequency of use of illegal substances, and her lack of candor concerning information about her drug involvement that she furnished to the Government, her drug usage continues to be of concern. However, I do find that Applicant's conduct of not using methamphetamine since 2003 or 2004, comes within MC 26. (b) "a demonstrated intent not to abuse any drugs in the future," such as (3) "an appropriate period of abstinence."

In this case, the Government has met its initial burden under Guideline H of proving by substantial evidence that Applicant has used illegal drugs for many years. Applicant, on the other hand, has introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against her. Accordingly, Paragraph 2 Guideline H of the SOR is concluded for 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 circumstances. The 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) 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 eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I have considered the potentially disqualifying and mitigating conditions under Guidelines H and E, in light of all the facts and circumstances surrounding this case. Based on all of the reasons cited above, including Applicant’s long history of using methamphetamine, and her lack of honesty and candor with the information she furnished to the Government, I find that the record evidence leaves me with serious questions and doubts as to Applicant’s eligibility and suitability for a security clearance under the whole person concept. For all these reasons, I conclude Applicant has not mitigated the security concerns.

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 E:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraph 1.a. -1.c.:	For 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.

Martin H. Mogul
Administrative Judge