



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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SSN: -----) ISCR Case No. 08-03761
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Applicant for Security Clearance)

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel
For Applicant: *Pro Se*

August 28, 2008

Decision

MALONE, Matthew E., Administrative Judge:

Applicant has not mitigated the security concerns raised by the government’s information about her illegal drug involvement. Accordingly, her request for a security clearance is denied.

On November 6, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to request a security clearance required as part of her employment with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant’s request.

On April 22, 2008, DOHA issued to Applicant a Statement of Reasons (SOR), which specified the basis for its decision – security concerns addressed in the Directive

¹ Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

under Guideline H (Drug Involvement) of the Revised Adjudicative Guidelines (AG).² More specifically, the government alleged that Applicant used marijuana at least 100 times between September 2000 and June 2007 (SOR ¶ 1.a); that she used cocaine at least 10 times between September 2000 and June 2007 (SOR ¶ 1.b); that she used ecstasy at least four times between September 2000 and July 2006 (SOR ¶ 1.c); and that she purchased marijuana four or five times between September 2000 and June 2007 (SOR ¶ 1.d).

On May 13, 2008, Applicant answered the SOR and admitted all of the SOR allegations. She also requested a decision without a hearing. On May 30, 2008, DOHA Department Counsel submitted a file of relevant materials (FORM)³ in support of the government's preliminary decision. Applicant received the FORM on June 6, 2008, and was given 30 days to file a response to the FORM. She did not submit anything in response to the FORM. The case was assigned to me on August 15, 2008.

Findings of Fact

Applicant's admissions in response to the SOR are admitted as fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the FORM, I make the following additional findings of fact.

Applicant is a 28-year-old college graduate with a degree in Business Administration she earned in 2001. She has worked for defense contractors since 2001 and her current employer, also a defense contractor, since September 2007. (FORM, Item 5). When she submitted her security clearance application in November 2007, she disclosed she had used marijuana extensively from September 2000 to at least June 2007. She also disclosed several instances of cocaine use during the same period and sporadic use of a mood altering drug known as ecstasy prior to July 2006. (FORM, Item 5) In response to interrogatories propounded by DOHA adjudicators, Applicant also disclosed that on four or five occasions between September 2000 and June 2007, she bought marijuana to use with her friends at parties, spending about \$50 for each purchase. (FORM, Item 6)

Applicant asserts she no longer uses illegal drugs. She decided to stop using illegal drugs in June 2007, and in July 2007 moved away from the friends and acquaintances with whom she used drugs. Applicant's illegal drug use did not cause any financial, social, or other problems; however, she now wishes to live a healthier, more productive lifestyle. She does not intend to use illegal drugs in the future. (FORM, Items 4, 5, and 6)

² Adjudication of this case is controlled by the Revised Adjudicative Guidelines, approved by the President on December 29, 2005, which were implemented by the Department of Defense on September 1, 2006. Pending official revision of the Directive, the Revised Adjudicative Guidelines supercede the guidelines listed in Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

³ See Directive, Enclosure 3, Section E3.1.7. The FORM included six documents (Items 1 - 6) proffered in support of the government's case.

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the Revised Adjudicative Guidelines (AG).⁴ Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole person” concept, these factor are:

(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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline H (drug involvement) at AG ¶ 24.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁵ for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the government's case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁶ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard

⁴ Directive. 6.3.

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶ See *Egan*, 484 U.S. at 528, 531.

compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government.⁷

Analysis

Drug Involvement.

The security concern about drug involvement, as expressed in AG ¶ 24, is that “[u]se 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.” The government produced sufficient information, which Applicant does not contest, that shows she used marijuana extensively, and other illegal drugs to a lesser extent, for about seven years, starting when she was in college. She also possessed illegal drugs sporadically over those seven years when she purchased marijuana for use with her friends. These facts require application of the disqualifying conditions listed at AG ¶ 25(a) (any drug abuse) and AG ¶ 25(c) (illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia).

In response, it is likewise uncontested that Applicant has not used or been involved with illegal drugs since June 2007. Applicant appears to have disclosed the full extent of her drug involvement and asserts she will not use drugs in the future. Among the mitigating conditions listed in AG ¶ 26, I have considered the potential application of AG ¶ 26(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 AG ¶ 26(b) (*a demonstrated intent not to abuse any drugs in the future, such as: (1) dissociation 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;*).

However, given Applicant's extensive history of drug use over most of her adult life to date, it is too soon to safely predict she has eliminated her illegal drug use as a security concern. Even accepting that Applicant has discontinued her association with persons who use drugs and has changed her circumstances to avoid future drug use, her use of marijuana 100 times over the course of 81 months represents a frequency of more than once a month. Accordingly, I conclude her 14-month period of abstinence is insufficient to mitigate the security concerns about her drug use.

Whole Person Concept.

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guideline H. I have also reviewed the record before me in the context of the whole person factors listed in AG ¶ 2(a). Applicant is 28 years old and

⁷ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

presumed to be a mature, responsible adult. However, most of her adult life so far has been dominated by her involvement with illegal and unsafe conduct. Despite the absence of arrests or other known problems as a result of her drug use, there is no available information to support any of the AG ¶ 2(a) factors. A fair and commonsense assessment⁸ of the available information bearing on Applicant's drug use shows she has not yet satisfied the doubts about her ability or willingness to protect the government's interests.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Drug Involvement: AGAINST APPLICANT

Subparagraphs 1.a - 1.d: Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest to allow Applicant access to classified information. Request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge

⁸ See footnote 4, supra.