



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-08337
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel

For Applicant: *Pro se*

December 16, 2009

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP), on February 25, 2008. (Government Exhibit 1.) On March 11, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline H (Drug Involvement). 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 submitted an Answer to the SOR on April 15, 2009, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on May 10, 2009. I received the case assignment on May 12, 2009. DOHA issued a notice of hearing on May 27, 2009, and I convened the hearing as scheduled on June 29, 2009. The Government offered Government Exhibits 1 and 2, which were received

without objection. Applicant testified on her own behalf and submitted Applicant's Exhibits A through E, without objection. DOHA received the transcript of the hearing on July 8, 2009. The Applicant asked for the record to remain open and, on July 8, 2009, offered Applicant's Exhibit F, which was also received without objection. The record closed on July 8, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Ruling on Evidence

The copy of Applicant's Exhibit F that was supplied to me by Department Counsel contains a notarization statement signed by the Applicant, and a letter of recommendation from a friend of the Applicant's. Department Counsel indicates that the Applicant's post-hearing evidence he received also contained a signed statement of intent from the Applicant, stating that she would not use illegal drugs in the future and understanding that automatic revocation of her security clearance would occur for any violation. (AG ¶ 26.(b)(4).) Even though the actual statement is not present in the record, I will consider this case as if such a statement were present. This decision is based on the representation by the Department Counsel, the available documentary evidence, and my authority under Directive ¶ E.3.1.10, which states, "The Administrative Judge may rule on questions on procedure, discovery, and evidence and shall conduct all proceedings in a fair, timely, and orderly manner. (See, Transcript at 35.)

Findings of Fact

The Applicant is 25, and has a Bachelor of Arts degree. She is employed by a defense contractor and seeks to obtain a security clearance in connection with her employment.

Guideline H - Drug Involvement

The Government alleges under Guideline H that the Applicant is ineligible for clearance because she has used illegal drugs.

The Applicant used marijuana between 10 and 20 times during the period August 2000 and approximately July 2007. According to the Applicant, her use of marijuana was very infrequent, once or twice a year at most. (Transcript at 25-28.)

The Applicant was also involved with cocaine. Her use occurred between June 2007 and December 2007. During that time she used cocaine about 20 times. Her use of cocaine ended simultaneously with her graduation from college in December 2007. (Transcript at 23-25, 28.)

The last time the Applicant used drugs was December 2007. Concerning this decision she states, "I didn't want to continue that lifestyle. I was ready to be - - I was out of college. I was ready to move on with my life and, you know, I matured a lot since

then, and I knew what I was doing was wrong and I didn't want to continue down that path." (Transcript at 28.) She further stated, "I've grown so much since the time that I did these stupid things, and I know that I'm a smart girl who just did a very dumb thing." (Transcript at 35-36.) She graduated from college in December 2007, moved back to her home town, and got a job in the defense industry. She no longer associates with any of the people she used drugs with while in college.

The Applicant's employer and members of her family know about her drug use. She also freely informed the Defense Department of her drug use in Government Exhibit 1 at Section 24. (Transcript at 32, 36-38, 41-42.) The Applicant also expressed a desire to submit a notarized declaration of intent to the Administrative Judge for insertion into the record. (Transcript at 35, 43.)

Mitigation

The Applicant submitted documentary evidence showing that she is a highly respected person and employee. She began working in the defense industry in March 2008.

Applicant's Exhibit A is a letter from the Applicant's neighbor of 11 years, who is also the Government Lead and Contract Ordering Officer for the contract the Applicant supports. This person states that she trusts the Applicant. In addition, "Through her diligence, excellent work ethic, professionalism and experience, [the Applicant] was promoted to the Team Lead She is overseeing over 20 personnel and \$3.5M."

Applicant's Exhibits B, C and D are from three co-workers, including one of her siblings. All three of the correspondents recommend that the Applicant be granted a security clearance stating she is "honest, fair and trustworthy," and also someone who shows "a high degree of integrity."

Applicant's Exhibit E is the Applicant's performance review for 2008. She is described as a "solid contributor" and that she "Meets/Occasionally Exceeds Expectations."

The Applicant acts as a care giver for an elderly neighbor. The neighbor's daughter, who has held a security clearance for 30 years, also submitted a letter on the Applicant's behalf. She describes what the Applicant does for her mother, submits that the Applicant is a trustworthy person, and that she recommends the Applicant for a security clearance. (Applicant's Exhibit F at 3.)

Policies

Security clearance decisions are not made in a vacuum. 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 to be used as appropriate 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 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. In addition, the administrative judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized by the President in Section 7 of Executive Order 10865, "Any determination under this order . . . shall be a determination 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 H - Drug Involvement

The security concern relating to the guideline for Drug Involvement is set out in AG ¶ 24:

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. Drugs are defined as mood and behavior altering substances, and include: (1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and (2) inhalants and other similar substances; Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

I have considered the disqualifying conditions under Drug Involvement AG ¶ 25 and especially considered the following:

(a) any drug abuse.

The Applicant used marijuana on an infrequent basis, from 2000 until approximately July 2007. In addition, she used cocaine approximately 20 times during the six month period from June 2007 to December 2007. I find that this disqualifying condition applies.

I have considered all of the mitigating conditions under Drug Involvement AG ¶ 26 and especially considered the following:

(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 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 are used; (3) an appropriate period of abstinence; (4) a signed statement of intent with automatic revocation of clearance for any violation.

The evidence is clear that the Applicant's use of marijuana and cocaine were the actions of an immature young person. The Applicant's credible testimonial evidence shows that she is extremely remorseful about these events, has been truthful about the incidents on repeated occasions with the Government, her employer, as well as her family, and has taken steps to alleviate any possibility of recurrence. Of particular

weight was her very credible testimony, as well as her presenting to Department Counsel a signed statement of intent not to use illegal drugs in the future.

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 relevant circumstances. 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. 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) 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The Applicant is a hard-working, respected, professional person who engaged in occasional drug abuse while a young person in college. In viewing all the facts of this case, I find that the Applicant has mitigated the security significance of her prior conduct. As set forth at length above, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). In addition, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶2(a)(8)), and that there is little to no likelihood of recurrence (AG ¶2(a)(9)).

I have specifically considered the span of time between the Applicant's last use of cocaine and the date the record closed. It is a relatively brief span of time, but given the strength of the Applicant's other evidence, the evidence still supports a finding for the Applicant.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude the Applicant has mitigated the security concerns arising from her drug involvement.

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing her request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

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:	FOR THE APPLICANT
Subparagraph 1.a:	For the Applicant
Subparagraph 1.b.:	For the Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge