



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



In the matter of:)
)
) ISCR Case No. 08-08946
)
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn Hoffman, Esquire, Department Counsel
For Applicant: *Pro Se*

August 28, 2009

Decision

RIVERA, Juan J., Administrative Judge:

Applicant failed to mitigate the drug involvement security concerns arising from her illegal use of marijuana. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted her security clearance application on June 2, 2008 (Electronic Questionnaires for Investigations Processing (e-QIP)). On February 12, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her alleging security concerns under Guideline H (Drug Involvement).¹ The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for her, and recommended referral to

¹ The SOR was issued pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as modified and revised.

an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant answered the SOR (Answer) on March 4, 2009, and requested to have her case decided on the written record in lieu of a hearing. On March 25, 2009, the government requested a hearing. The case was assigned to me on April 22, 2009. DOHA issued the notice of hearing on May 1, 2009. The hearing was convened as scheduled on May 15, 2009. The government offered exhibits (GE) 1 through 3, which were admitted without objection (Tr. 17). Applicant testified on her own behalf, and presented no other evidence. DOHA received the transcript of the hearing (Tr.) on May 27, 2009.

Procedural Issues

Applicant received constructive notice of her hearing date on April 27, 2009. On that date, Applicant agreed with department counsel to have her hearing scheduled for May 15, 2009. At her hearing, Applicant indicated she had sufficient time to prepare for her hearing and that she was ready to proceed.

Findings of Fact

Applicant admitted all the SOR allegations. Her admissions are incorporated herein as findings of fact. After a thorough review of all evidence of record, and having considered Applicant's demeanor and testimony, I make the following additional findings of fact.

Applicant is a 48-year-old administrative assistant working for a defense contractor. She attended college and received her associate's degree in business in December 1979. She has continued taking college courses whenever her schedule permits. She married her husband in August 1989, and they were divorced in June 2001. She has two adopted children, a daughter aged 20, and a son, aged 18.

While in high school and in college, between 1974 and August 1979, Applicant illegally used marijuana approximately once every month (Tr. 25-26). Between 1979 and 2000, Applicant did not use marijuana. She moved away from her marijuana-using friends, began dating and decided that using marijuana was no longer part of her life.

In 1999 and 2000, Applicant travelled to Europe on business. On both occasions, she and some co-workers (friends) took time off during two weekends and traveled to the Netherlands to "legally" smoke marijuana (Tr. 32-34). She smoked marijuana once in 1999 and once in 2000. In 2001, Applicant illegally ordered marijuana seeds from the Netherlands through the U.S. Postal Service. During approximately seven months, she grew marijuana plants in her home basement. She then harvested the marijuana and stored it in plastic bags.

Applicant grew the marijuana for her personal consumption. Between 2001 and 2004, Applicant illegally used marijuana approximately 21 days out of 30 days a month (Tr. 35-37, 67). She shared her marijuana with her friends. In particular, she shared the marijuana frequently with a female friend who rented Applicant's basement apartment while she was growing the marijuana plants. Between 2001 and 2004, Applicant became marijuana dependent (Tr. 59).

Applicant explained that after her return from the Netherlands she went through a very difficult period in her life. She was laid off her job six months after her trip, her husband filed for divorce, she became a single parent, and she could no longer have an au pair to assist her with her children's care. She used marijuana to cope with her problems.

In 2004, Applicant stopped using marijuana "cold turkey" (Tr. 38). She stopped using marijuana because she realized she had developed dependence on marijuana and was having trouble controlling her urge to use marijuana. When she smoked marijuana she no longer liked the way it was affecting her and the way it made her feel (sluggish, drowsy, and tired). Also, she was concerned that being under the influence restricted her from driving and taking care of her children (Tr. 34). Moreover, she did not like her own attitude towards her children. She was aware that she was placing herself in an inappropriate position and her illegal use of marijuana showed a lack of judgment. Applicant did not use marijuana between 2004 and July 2007.

In July 2007, Applicant attended a party with around 30 of her friends. After the party, she smoked marijuana with six of her friends because of peer pressure (Tr. 44-45). She was 47 years old. Applicant acknowledged that by using marijuana she demonstrated poor judgment. At the time, she was working for a company that required her to take a drug test as a condition of employment. The company also had a policy against the use of illegal drugs. In January 2008, Applicant used marijuana twice. She used marijuana while dating someone she had been romantically involved with before (Tr. 45-47).

Applicant testified she has not used marijuana since January 2008. She has never participated in any drug rehabilitation treatment or counseling (Tr. 59). Applicant believes she does not need the drug counseling. She believes she is doing all the right things and that she is capable of doing what she needs to do without professional help (Tr. 82). Applicant is undergoing psychiatric treatment and takes medication for mood stabilization issues not related to her marijuana abuse (Tr. 80). She believes that her drug abuse was, in part, due to her suffering from depression. She used the marijuana to cope with her depression. She believes that taking anti-depression medication helps her to remain abstinent.

Applicant stopped using illegal drugs because of concerns with her current job and because she wants to ensure her own medical and psychological health (Tr. 81). She has made some lifestyle and behavioral changes to stay abstinent. Notwithstanding, Applicant is still in contact with some of the friends with whom she

used marijuana between 2001 and 2004. She still has frequent contact with the friend who rented her basement apartment during 2001-2004. They talk to each other once a month.

Applicant was hired by a government contractor in May 2008. Pursuant to her employment, in June 2008, she submitted a security clearance application in which she disclosed her history of marijuana use. During a follow up interview by a government investigator and in DOHA interrogatories, Applicant confirmed her use of marijuana. At her hearing, Applicant was candid and promptly answered any and all questions about the circumstances surrounding her use of marijuana. All of the information the government has concerning Applicant's use of drugs was disclosed by her. Applicant expressed remorse for her past use of marijuana. She acknowledged that her actions reflect bad judgment. She noted that she has not used marijuana since January 2008.

Policies

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest to grant or continue an applicant's eligibility for access to classified information.²

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 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 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."³ 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

² See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ *Egan*, *supra*, at 528, 531.

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 H, Drug Involvement

AG ¶ 24 articulates the government’s security concern about 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.

AG ¶ 25 provides eight drug involvement conditions that could raise a security concern and may be disqualifying. Two drug involvement disqualifying conditions raise a security concern and may be disqualifying in this particular case: AG ¶ 25(a): “any drug abuse;”⁴ and AG ¶ 25(b): “illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.”

AG ¶¶ 25(a) and 25(b) apply. Applicant used marijuana infrequently during high school and college. She used marijuana in the Netherlands in 1999 and 2000. In 2001, she ordered marijuana seeds from the Netherlands using the U.S. Postal System. She then grew the marijuana in her basement. She cultivated the marijuana for her personal use and shared it with friends. She extensively used marijuana between 2001 and 2004, and became marijuana dependent. Applicant did not use marijuana between 2004 and

⁴ AG ¶ 24(b) defines “drug abuse” as “the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.”

2007. She used marijuana again once in 2007 and twice in 2008. The other disqualifying conditions listed in AG ¶ 25 are not applicable.

Applicant disclosed her illegal marijuana use on her 2008 security clearance application, to a government investigator during a subsequent interview, and at her hearing. She used illegal drugs infrequently during high school and college. She then used marijuana between 2001 and 2004, to cope with her personal and psychological problems. She used marijuana in 2007 and 2008 because of peer pressure. She illegally possessed marijuana before she used it, and she cultivated marijuana.

AG ¶ 26 provides four 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;
- (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; and
 - (4) a signed statement of intent with automatic revocation of clearance for any violation.
- (c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and
- (d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Considering the record as a whole, I find that none of the mitigating conditions apply. Between 2001 and 2004, Applicant used marijuana heavily and developed dependence on the drug. At the time, Applicant was a mature woman and fully understood the adverse legal, mental, and health consequences of her use of marijuana. Applicant stopped using marijuana between 2004 and 2007, because she realized she was becoming marijuana dependent, and her drug use was adversely affecting her health and lifestyle. Notwithstanding, she again used marijuana in 2007 and 2008.

Applicant's last use of marijuana was in January 2008, and, as such, it is recent. Considering the record as a whole, I find that her questionable behavior did not happen under such circumstances that it is unlikely to recur. She has not disassociated from her drug-using friends and that continues to cast doubt on Applicant's current reliability, trustworthiness, and judgment.

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) 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 eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

The evidence against approval of Applicant's clearance includes her use of marijuana while in high school and college, her extensive use of marijuana between 2001 and 2004, and her recent use of marijuana in 2007 and in 2008. Although Applicant seems to be making some lifestyle changes, she has not completely disassociated herself from her marijuana abusing friends. These contacts led to her relapses.

The evidence supporting approval of Applicant's clearance is less substantial. She has worked for a government contractor since May 2008. She is a valued employee and a good mother. She seems to be taking the right course of action to become abstinent, and she is seeking professional assistance to control her mood problems.

She receives full credit for disclosing her history of illegal drug use on her 2008 security clearance application. She candidly discussed her drug use with a government investigator, in her response to DOHA interrogatories, on her SOR response, and at her hearing. She knows the consequences of drug abuse. Because she was candid in the security clearance process, in the future – after a reasonable period of abstinence and drug counseling - she should be able to demonstrate her ability to hold a security clearance. On balance, after weighing the disqualifying and mitigating conditions, all the

facts and circumstances, in the context of the whole person, I conclude that, at this time, she has not mitigated the drug involvement 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 H:	AGAINST APPLICANT
Subparagraphs 1.a - 1.c:	Against 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's security clearance. Eligibility for access to classified information is denied.

JUAN J. RIVERA
Administrative Judge