



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



In the matter of:)	
)	
)	ISCR Case No. 09-02222
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah A. Minster, Esquire, Department Counsel
For Applicant: *Pro Se*

February 24, 2010

Decision

LAZZARO, Henry, Administrative Judge

Applicant mitigated the security concern caused by her marijuana use, which last occurred in or about August 2008. Clearance is granted.

On September 30, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.¹ The SOR alleges a security concern under Guideline H (drug involvement). Applicant's response to the SOR was received by DOHA on November 2, 2009. She denied the allegation contained in SOR subparagraph 1.a, admitted the allegation contained in SOR subparagraph 1.b, and she requested a decision based on the record without a hearing.

Department Counsel prepared a File of Relevant Material (FORM) on November 23, 2009, which was mailed to Applicant on November 24, 2009. Applicant was notified she

¹ This action was taken under Executive Order 10865, DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive), and revised adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

had 30 days from receipt of the FORM to submit her objections thereto or any additional information she wanted considered. Applicant acknowledged receipt of the FORM on December 3, 2009. She submitted a written response to the FORM with five attachments. On January 7, 2010, Department Counsel indicated she did not object to the admissibility of the material submitted by Applicant. The case was assigned to me on January 20, 2010.

Findings of Fact

Applicant's admission to the one SOR allegation is incorporated herein. In addition, after a thorough review of the pleadings and exhibits, I make the following findings of fact:

Applicant is a 26-year-old single woman who has been employed as a legal associate by a defense contractor since November 2008. She graduated from high school in May 2002, and she attended college from August 2002 until May 2006. She did not receive a college degree, but she resumed part-time remote attendance at the same college in 2009.

Applicant worked as a desk clerk at a hotel from June 2006 until September 2006, and as a sales associate in a retail store from December 2006 until October 2008. She was unemployed from October 2006 until December 2006, and again from October 2008 until November 2008.

Applicant's project manager/team leader with her current employer attests that Applicant is an integral part of his team who has proven herself to be a dependable, trustworthy, and excellent worker. A family friend who is an intelligence analyst for a U. S. Government agency considers Applicant a dependable, honest, and trustworthy individual. Both of these individuals believe Applicant can be trusted to safeguard classified information if she is granted a security clearance.

On December 12, 2008, Applicant submitted a Questionnaire for Sensitive Positions (SF 86), in which she admitted using marijuana about 50 times between October 2004 and May 2006, and 25 more times between February 2007 and August 2008. She was questioned about her use of marijuana on January 7, 2009, and she again acknowledged that she had used marijuana as she stated in the SF 86. When questioned, she elaborated that she used marijuana about 50 times from 2004 to 2006 with friends at parties while she was a college student. She also stated she purchased marijuana in 2007 and 2008 from a coworker while she was employed as a sales clerk, and she used it about 25 times at home to reduce stress.

Applicant does not live in the same area where she attended college and she no longer associates with the people she used marijuana with while she was in college. She also does not associate with the person she purchased marijuana from while she worked as a sales clerk. Applicant has not used marijuana since August 2008. She does not intend to use marijuana in the future, and, on January 4, 2010, she executed and submitted a statement expressing that intent and agreeing to the automatic revocation of any security clearance she may be granted if she abuses any controlled substance in the future.

Policies

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the disqualifying conditions and mitigating conditions for each applicable guideline. Each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶¶ 6.3.1 through ¶¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guidelines H (drug involvement), with its disqualifying and mitigating conditions, is most relevant in this case.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.² The Government has the burden of proving controverted facts.³ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁴ although the Government is required to present substantial evidence to meet its burden of proof.⁵ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁶ Once the Government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against her.⁷ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁸

No one has a right to a security clearance⁹ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."¹⁰ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.¹¹ _____

² ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

³ ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

⁴ *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

⁶ ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

⁷ ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

⁸ ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

⁹ *Egan*, 484 U.S. at 528, 531.

¹⁰ *Id* at 531.

¹¹ *Egan*, Executive Order 10865, and the Directive.

Analysis

Guideline H, 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.

Applicant illegally purchased and used marijuana about 75 times between October 2004 and August 2008. Disqualifying Conditions (DC) 25(a): *any drug abuse*; and DC 25(c): *illegal drug possession, including . . . purchase, sale, or distribution* apply.

Applicant began using marijuana at a young age while attending parties with college friends. She purchased and used marijuana while she worked as a sales clerk in a retail store. Applicant last used marijuana in or about August 2008. Before she began working for a defense contractor in November 2008, she committed to abstaining from future marijuana use. Since making that decision, she has proven herself to be an excellent worker and she has earned a reputation as a dependable, honest, and trustworthy individual. She no longer associates with the people with whom she formerly used marijuana, and she has executed and submitted a declaration that she will not abuse controlled substances in the future with an agreement to the automatic revocation of her security clearance if she does abuse a controlled substance.

The following Mitigating Conditions (MC) apply in this case: MC 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 MC 26(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; (4) a signed statement of intent with automatic revocation of clearance for any violation*.

I have considered all relevant and material facts and circumstances present in this case, including Applicant's relatively young age when she used and purchased marijuana, the period of time that has elapsed since her last use of marijuana, the letters of recommendation she submitted, her consent to an automatic revocation of her security clearance if she abuses a controlled substance in the future, the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions. Applicant has mitigated the security concern caused by her abuse of marijuana. She has overcome the case against her and satisfied her ultimate burden of persuasion. It is clearly consistent with the national interest to grant Applicant a security clearance.

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 APPLICANT

 Subparagraph 1.a: For Applicant

 Subparagraph 1.b: For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Henry Lazzaro
Administrative Judge

