



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 09-06417
)	
Applicant for Security Clearance)	

Appearances

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

May 28, 2010

Decision

MASON, Paul J., Administrative Judge:

Applicant’s use of a variety of illegal drugs and legal drugs in a manner that deviates from approved medical direction, from 2002 through September 2009, has not been mitigated. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted her Security Clearance Application (SCA, Item 5) on April 11, 2009. She was interviewed by an investigator from the Office of Personnel Management (OPM) on June 2, 2009. That interview appears in her Answers to Interrogatories (Item 6) that were signed and notarized on November 11, 2009. The adjudicators for the Defense Office of Hearings and Appeals (DOHA) could not find it was clearly consistent with the national interest to grant Applicant access to classified information. On February 16, 2010, DOHA issued Applicant a Statement of Reasons (SOR) detailing security concerns under drug involvement (Guideline H). The action was taken pursuant to 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 adjudicative guidelines (AG).

Applicant provided her answer to the SOR on March 10, 2010. She requested a decision be made on the record in lieu of a hearing. A copy of the Government's File of Relevant Material (FORM, the Government's evidence in support of the allegations of the SOR) was sent to Applicant on April 7, 2010. She received the FORM on April 13, 2010, and provided her 17-page response to the FORM on May 11, 2010. Department Counsel indicated on May 14, 2010, he had no objection to the response, and it is now a part of the record for my review. The case file was assigned to me on May 18, 2010.

Findings of Fact

The SOR contains 13 allegations under drug involvement. Applicant admitted SOR 1.a through 1.f, and 1.h through 1.k. She denied 1.g, 1.l and 1.m. Applicant's admissions are included in the following Findings of Fact.

Applicant is 28 years old and single. She has no children. She was cohabitating with her boyfriend from 2002 until approximately May 2009. She received a Bachelor's of Science degree in Electrical Engineering/Computer Engineering in May 2005. She has been employed as a research engineer by a defense contractor. She seeks a secret security clearance. She has never had a clearance.

In her SCA (Item 5), Applicant referenced her boyfriend. She noted that the relationship began in July 2002. In her response to the FORM, Applicant explained her boyfriend was a chronic drug user whose usage exceeded Applicant's use. (Response to FORM at 7) She purchased her drugs from her boyfriend or his friends who always had access to drugs. She broke up with her boyfriend in late April 2009. A few months later her former boyfriend entered a drug rehabilitation program. (*Id.*)

Applicant's interview (Item 6) with an OPM investigator dated June 2, 2009, her SCA (Item 5), and her response to the FORM, provide a detailed history of her drug use since April 2002. She used marijuana (SOR 1.a) about 10 to 15 times a month from April 2002 to September 2009. She also purchased (SOR 1.b) the drug, but did not provide details.

Applicant abused vicodin (SOR 1.c) approximately 10 to 15 times a month from April 2002 to September 2009. She also purchased the drug during the period. (SOR 1.d.) She abused vicodin in June 2009 to help her sleep. She abused aderol (SOR 1.e) at varying frequency, but claimed she discontinued aderol use in June 2009.

Applicant used cocaine (SOR 1.f) on no more than four occasions between April 2002 and April 2005. Shortly after breaking up with her boyfriend, she used the drug one additional time in May 2009 during a visit with friends. There is no evidence in the record indicating that Applicant purchased cocaine. (SOR 1.g)

Applicant used opium (SOR 1.h) on about 20 occasions between October 2008 and April 2009. Most of her purchases (SOR 1.i) and usage of opium occurred between early 2009 and late April 2009, after her boyfriend began living with her. Applicant used psilocybin mushrooms (SOR 1.j) no more than four times between April 2002 and November 2007.

Applicant admitted using illegal drugs after submitting her SCA on April 11, 2009. (SOR 1.k)

SOR 1.l, alleging Applicant sold illegal drugs to friends, is based on her June 2009 interview (Item 6), where she stated she sold drugs to friends when they needed them. However, Applicant indicated in her May 2010 response to the FORM that the statement (Item 6) was false. She stated:

I have never sold drugs to my friends; I have however purchased drugs on behalf of my friends while purchasing drugs for myself (almost exclusively marijuana). The nature of drug purchasing requires secrecy, in a similar way the DoD requires secrecy. Sellers prefer to sell to select, vetted, buyers, so that both parties can mitigate the risk of detection and prevent untrustworthy entities from obtaining incriminating information. (response to FORM, at 4)

Applicant also denied SOR 1.m alleging that she intended to continue illegal drug use if she is not granted a security clearance. In her interview in June 2009 (Item 6), Applicant indicated she would stop using drugs if she received a security clearance. If she did not receive a security clearance, she did not feel it would be necessary to stop using drugs. In her response to the FORM, Applicant believed she may have misunderstood the word "intent" in the context of the questioning. She explained that if a situation were to arise where sobriety was designated a requirement, then she would stop. (Response to FORM, at 6) Even though her decision to use or not use drugs is guided by personal choice in addition to external pressure, she has decided to abstain from future drug use. Applicant also noted she was making a concerted effort toward refraining from all future drug use. (*Id.*)

In the last section of Applicant's response to the FORM, she contends her character, not her drug history, should be the most important factor in the determination of whether to grant or deny her security clearance. She does not believe her character references were interviewed.

In the Conclusion section of her response to the FORM, Applicant indicated that her privacy was being invaded by the wording and zero tolerance policies set forth in the drug involvement guideline (Guideline H). In her view, there seems to be no distinction drawn by the guideline between the person who uses drugs and the person who is addicted to drugs. She did not believe her recreational use of drugs to represent a flaw in her character.

Character Evidence

In her response to the FORM, Applicant noted she has been working for DoD projects for the past 10 years while she was in school, and has continued working on DoD projects with her current employer since February 2005.

Applicant indicated her reliability is above reproach. Her credit rating is excellent. She has an outstanding scholastic record. She helps her younger sister and mother pay bills. Applicant is the director of a coop, and has to make daily decisions to ensure the organization is operated as inexpensively and efficiently as possible.

Applicant's openness during the security investigation is a testament to her trustworthiness. Her supervisors have consistently recommended she apply for a security clearance, despite her resistance in seeking access to classified information.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). Each guideline lists potentially disqualifying conditions and mitigating conditions. These guidelines are flexible rules of law that must take into consideration the complexities of human behavior.

The administrative judge's ultimate goal is to reach a fair and impartial decision that is based on commonsense. The decision should also include a thorough evaluation of a number of variables known as the "whole-person concept" that brings together 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. Reasonable 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 sensible, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 the potential, rather than actual, risk of compromise of classified information.

Under Directive ¶ E3.I.14., the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.I.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.

Analysis

Drug Involvement

Paragraph 24 of the AG sets forth the security concern attached to 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.

(a) 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, and

(2) inhalants and other similar substances;

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

The guideline notes several disqualifying conditions that could raise security concerns. During the period between April 2002 and September 2009, Applicant purchased and used a variety of illegal drugs, or misused prescription drugs. AG ¶ 24(b) (*use of a legal drug in a manner that deviates from medical direction*); 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*) apply.

The record shows that Applicant continued to use drugs after she submitted her SCA in May 2009. However, AG ¶ 25(g) (*any illegal drug use after being granted a security clearance*) applies only while applicant has a security clearance. AG ¶ 25(g) does not apply.

AG ¶ 25(h) (*expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use*) applies. Though the record does not demonstrate an unequivocal intent by Applicant to continue drug use, she stated in June 2009 that if she did not receive a security clearance, it would not be necessary for her to stop using drugs. Her subsequent statements in her May 2010 response to the FORM do not clearly and convincingly establish she is resolved to abstinence from illegal drugs or misuse of non-prescribed drugs.

The two relevant mitigating conditions under the drug involvement guideline are: 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) disassociation from drug-using associates and contacts, (2) changing or avoiding the environment where drugs are used, (3) an appropriate period of abstinence, and (4) a signed statement of intent with automatic revocation of clearance for any violation*).

Though Appellant's abuse of some of the illegal drugs was sporadic or experimental in the period between April 2002 and September 2009, she used marijuana and misused the prescription drug vicodin on a regular basis during the period. In order to use marijuana 10 to 15 times a month, I conclude she purchased the drug regularly. If each drug is analyzed individually, her experimental use of some of the drugs might qualify for infrequent use that ended a long time ago. However, because the evidence must be viewed as a whole, the entire course of Applicant's illegal drug use, which lasted over seven years without clear convincing evidence of a commitment to abstain in the future, continues to cast doubt on her judgment and reliability. AG ¶ 26(a) does not apply.

Applicant's severance of ties with her boyfriend in April 2009 carries some weight as disassociating from drug-using associates. However, shortly after their separation, she resorted to cocaine as a way to soothe her emotions after a long relationship with him. While her former boyfriend no longer lives with her, Applicant has not provided any evidence indicating removal from the drug-using environment she was a part of for about seven years. Considering the ambiguity of Applicant's May 2010 response to the FORM regarding future drug abstinence, I am unable to conclude Applicant will abstain from all drug use. Assuming that she stopped drug use in September 2009, eight months is not a sufficient period of abstention, considering her history of illegal drug abuse and the absence of any treatment program. Even without a signed statement of intent to forego future drug use with automatic revocation of clearance for any violation, AG ¶ 26(b) is inapplicable. Having weighed the disqualifying conditions with the mitigating conditions, Applicant has not met her ultimate burden of persuasion under the drug guideline.

Whole-Person Concept

This Decision must be an overall commonsense judgment based upon careful consideration of the guidelines and the general factors of the whole-person concept. Those factors include:

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 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 decision based on careful consideration of the guidelines and the whole-person concept.

Applicant is 28 years old. When she was 20 years old in April 2002, she began using drugs. In July 2002, she commenced a long relationship with her boyfriend, whom she described as a serious drug user. For the next seven years, Applicant used a variety of drugs. She purchased and sold some drugs to friends. Even after filling out her SCA in April 2009, and providing an interview to OPM in June 2009, she continued to use illegal drugs and non-prescribed drugs. Though she made statements in May 2010 of a growing intention to stop using drugs, she did not provide clear and convincing evidence that sufficiently shores up her intention, particularly because of her ongoing disagreements over the drug guideline in Directive 5220.6 and the Government's zero tolerance policy against drug use. Applicant has not mitigated her illegal drug use and misuse of non-prescribed drugs.

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

Subparagraph 1.a	Against Applicant
Subparagraph 1.b	Against Applicant
Subparagraph 1.c	Against Applicant
Subparagraph 1.d	Against Applicant
Subparagraph 1.e	Against Applicant
Subparagraph 1.f	Against Applicant
Subparagraph 1.g	For Applicant
Subparagraph 1.h	Against Applicant
Subparagraph 1.i	Against Applicant
Subparagraph 1.m	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge