



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



In the matter of:)	
)	
-----)	ISCR Case No. 10-01809
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro se*

October 29, 2010

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

On July 6, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising under Guideline E (Personal Conduct) and 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 adjudicative guidelines (AG).

In a July 13, 2010, response, Applicant denied the four allegations raised under Guideline E, but admitted the two allegations raised under Guideline H. She also requested a hearing. DOHA assigned the case to me on September 1, 2010. The parties proposed a hearing date of October 5, 2010. A notice setting that date for the hearing was issued on September 8, 2010. I convened the hearing as scheduled. Applicant gave testimony and presented no documents. She was given until October 13, 2010, to submit any documents for considerations as evidence. Department Counsel offered three documents, which were admitted as exhibits (Exs.) 1-3 without objection. The transcript (Tr.) of the proceeding was received on October 12, 2010. On October 14, 2010, Department Counsel forwarded two documents that were timely

received from Applicant. Noting no objection, I accepted the documents into the record as Exs. A-B. The record was then closed. Based on a thorough review of the testimony, submissions, and exhibits, I find Applicant failed to meet her burden of mitigating security concerns related to her drug involvement. Clearance denied.

Findings of Fact

Applicant is a 43-year-old technical support and training manager working for a software company. She has worked for the same defense contractor for approximately four years. In the late 1980s, she served in the Army Intelligence Corps for about four years, during which time she maintained a top secret security clearance. Applicant has a bachelor of science degree in information sciences. She is married and has two children.

Applicant was exposed to marijuana use in her youth. Her parents were “hippies” who regularly used marijuana in their small town.¹ In high school, Applicant used marijuana “infrequently,” about once a month.² Her stepfather and stepsister still use marijuana.³ They have used it when they have visited Applicant in her home. Their use is limited to the yard or elsewhere outside of the home interior. Applicant does not actively pursue a relationship with her stepfather, noting “I love him, but we all have relatives who make decisions that we are not comfortable with. So we just, you know, don’t pursue any kind of a relationship with him.”⁴ Applicant’s stepfather last visited in 2009 for Applicant’s son’s high school graduation. No significant supplemental information was provided regarding Applicant’s stepsister.

At issue is Applicant’s past use of marijuana, a controlled substance, between 2000 and 2009. Applicant is a member of the Wicca religion.⁵ Until it was recently disbanded, she was the leader of her coven.⁶ The faith’s spiritual work is “primarily done in a retreat space,” usually in the woods.⁷ In that setting, “under a very tightly governed ritual environment, marijuana is often used in those spaces.”⁸ It is used by elders and

¹ Tr. 14, 24.

² *Id.*

³ Applicant admitted to the SOR allegation regarding marijuana use by her stepfather and stepsister. In her April 28, 2010, interrogatory, however, she referred to her female sibling simply as a sister. See Ex. 3 (Interrogatory, dated Apr. 28, 2010) at 2.

⁴ Tr. 16.

⁵ The transcript uses the spelling “Wicka.”

⁶ Tr. 17.

⁷ Tr. 13.

⁸ *Id.*

those being initiated to a higher status as part of a “journeying style experience,” it is not recreational.⁹ The use of marijuana during these retreat rituals is optional.¹⁰

As part of this ritual process, Applicant used marijuana three times. She did so in the capacity of either an initiate or an elder. Applicant first used it in a ritual in October 2000, during a ritual through which she was elevated to become a leader in her faith.¹¹ During her initiation, she participated in the event with visiting leaders from another part of the country. She has had no subsequent contact with those individuals.¹² It was the first time she had used marijuana since high school.¹³ She next used it at a ritual in October 2002 at another ritual.¹⁴ She last used marijuana in a religious context at a ritual in July 2009. Such retreats occurred about every two to four years, although marijuana was not part of each retreat’s spiritual work unless an initiation rite was being performed.¹⁵ Applicant never provided the marijuana for these rituals.

When asked why she used marijuana at these rituals, if the drug was optional, Applicant stated: “Faith. I was trusting that the people who were teaching me and were compassionate loving people were introducing me to something that they felt was going to make me a better leader. And it was going to make me more . . . more spiritually aware.”¹⁶ In reflecting on her ritual use of marijuana, Applicant surmised that those expectations were not realized. She also stated that: “Additionally, I pursued alternate ways to be able to create the kind of spiritual awareness in absence of any kind of mind altering substances. Because I found that it was more reliable when the process was undertaken without drugs. So, you know, ala Carlos Castaneda. . . . [marijuana is] not reliable, it doesn’t stay.”¹⁷

Applicant remains a member of Wicca. Since disbanding her coven, however, Applicant has had infrequent contact with most of her former worshipers.¹⁸ The one

⁹ Tr. 18-19.

¹⁰ *Id.* Applicant noted, “It’s always a choice. It is not required. . . . But it is part of the process, the initiatory process in order to go through the journey.”

¹¹ Tr. 20. The transcript incorrectly attributes the date to October 2008, not October 2000. *Contrast* Exs. 1-3.

¹² Tr. 22.

¹³ Tr. 23.

¹⁴ Tr. 20.

¹⁵ Tr. 21.

¹⁶ Tr. 32.

¹⁷ Tr. 32-33.

¹⁸ Tr. 25.

former coven member with whom she maintains a regular friendship was also an elder. That elder declined to use marijuana during coven ritual ceremonies.¹⁹

Applicant has not consciously been in any environment where marijuana has been used since July 2009.²⁰ To the best of her knowledge, she does not consort with marijuana users. Applicant submitted a signed letter of intent to never consume marijuana or any other illegal drug in the future, understanding that to do so would be immediate cause for termination of any security clearance granted.²¹ She emphasizes that, having been raised around marijuana, she has made a conscious decision not to make the drug part of her lifestyle.²² She has no intention of using the drug in the future, for recreation or for ritual purposes.²³

In the interim, in about April 2009, Applicant and her husband discovered marijuana in their teenage son's bedroom. They were shocked. Marijuana is not part of the family's lifestyle.²⁴ The teen's parents had never used marijuana in his presence, nor were Applicant's family members allowed to use it in the presence of her children. Applicant and her husband had discussed drug use with the teen, urging him to make "intelligent choices."²⁵ Appropriate action was taken toward the child. Later, in an interview, Applicant's husband was attributed as saying or implying something to the effect that he and Applicant had used some of the confiscated marijuana.²⁶

At the beginning of the hearing, Applicant made it clear she had no idea about the origin of the allegations stating she and her husband used some of their son's marijuana.²⁷ When Applicant learned that the resultant SOR allegation about April 2009 marijuana use was based on a statement by her husband, Applicant was credibly surprised.²⁸ To rebut this assertion, Applicant's husband submitted a letter after the hearing. He disavowed the attributed statement as incorrect, commenting that: "My wife

¹⁹ Tr. 39-40.

²⁰ See, e.g., Tr. 26.

²¹ Ex. A (Applicant's letter, dated Oct. 12, 2010).

²² Tr. 31.

²³ Tr. 32. Should she attend any future Wicca gathering, she will first ascertain whether marijuana will be present. If it is, she will request that she not be present at the ritual.

²⁴ Tr. 29.

²⁵ Tr. 14.

²⁶ Tr. 26-29. The Government did not produce the interview notes for review or offer them as an exhibit. See Tr. 28. Therefore, neither the exact language attributed nor its context can be analyzed.

²⁷ See, e.g., Tr. 15.

²⁸ See, e.g., Tr. 28-29, 46.

and I did not consume any marijuana an [sic] April 2009. We joked about it after we found some in my son's room, but we never consumed it."²⁹

In completing her security clearance application (SCA) on or about September 23, 2009, Applicant fully disclosed the three instances of marijuana use set in a ritual setting. No mention was made as to having used or discovered marijuana in April 2009. Applicant was completely forthcoming about her ritual use of marijuana during a November 16, 2009, interview and in response to an April 12, 2010, interrogatory inquiring about her drug use. She did not mention either discovering marijuana in her son's bedroom or using that marijuana during those inquiries. At the hearing, Applicant took demonstrable efforts to offer full, thoughtful, and complete answers.³⁰

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all 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. 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ³¹ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.³²

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

²⁹ Ex. B (Applicant's husband's letter, dated Oct. 12, 2010).

³⁰ See, e.g., Tr. 42-43.

³¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³² ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”³³ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.³⁴

Based upon consideration of the evidence, Guideline E (Personal Conduct) and Guideline H (Drug Involvement) are the most pertinent to this case. Conditions pertaining to these AGs that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

Analysis

Guideline E – Personal Conduct

Security concerns arise from matters of personal conduct because “conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information.”³⁵ In addition, “any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process” is of special interest.³⁶ Here, personal conduct concerns were potentially raised when Applicant failed to identify her use of marijuana in about April 2009, after she and her husband found the illegal substance in their son’s bedroom; on her September 2009 SCA; during her November 2009 investigation interview; and in her April 2010 responses to an interrogatory. If true, such omissions would be sufficient to raise Personal Conduct Disqualifying Condition AG ¶ 16(a) (deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary

³³ *Id.*

³⁴ *Id.*

³⁵ AG ¶ 15.

³⁶ *Id.*

responsibilities). Consequently, the burden shifts to Applicant to mitigate the resultant security concerns.

Applicant has fully and consistently detailed her three instances of ritualistic marijuana use from the onset. Her testimony was highly credible. At the beginning of the hearing, she appeared genuinely baffled about the origin of the allegation that she and her husband had used some of their son's marijuana in April 2009. She was genuinely shocked and surprised to learn that they were allegedly based on a statement made by her husband during her investigation. The interviewer's notes were neither introduced as evidence nor offered for review, nor did a witness appear to authenticate the statements attributed. After being apprised as to the allegation's origin, Applicant discussed the matter with her husband. She ultimately forwarded a letter from her husband in which he disavowed stating that they had used their son's marijuana in April 2009. Applicant's testimony and evidence outweighs the scant evidence offered by the Government to substantiate the allegation, obviating application of the aforementioned disqualifying condition. However, if a disqualifying condition did apply, Personal Conduct Mitigating Condition AG ¶ 17(e) (the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress) and AG ¶ 17(f) (the information was unsubstantiated or from a source of questionable reliability) would apply.

The evidence shows that Applicant has been completely forthcoming with regard to many aspects of her life, including her drug usage. She gave more than adequate notice in her SCA, her interview, and her interrogatory that she has used marijuana. Little purpose would have been served to conceal one additional incident, especially one that occurred within the October 2000 to July 2009 time-frame at issue. Without either a document or a witness to provide insight about the alleged statement by her husband, neither Applicant nor I am able to examine the attributed comment's context or precise wording, or discern whether Applicant's husband was afforded the opportunity to review the statements attributed to him. In light of these considerations, I find that Applicant mitigated personal conduct security concerns regarding the specific allegations set forth in SOR allegations ¶¶ 1.a-1.d.

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.³⁷ "Drugs" are defined as mood and behavior altering substances, and include 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 inhalants and other

³⁷ AG ¶ 24.

substances.³⁸ “Drug abuse” is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.³⁹

Applicant admitted she used marijuana, a controlled substance, on three occasions between October 2000 and July 2009. She also admitted that she and her husband confiscated marijuana acquired and concealed by their teenage son. Such facts are sufficient to raise Drug Involvement Disqualifying Condition 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). With disqualifying conditions raised, the burden shifts to Applicant to mitigate related security concerns.

Applicant last used marijuana in July 2009, so her drug use was recent. However, it was one of only three isolated incidents that occurred over a span of about a decade. It also occurred within the context of a religious ritual. She has since determined that ritualized marijuana use, which was optional, did not enhance her spiritual journey. She intends to eschew drugs in the future. Like a friend and fellow-coven member, she will decline its usage during any future rituals and seek spiritual growth in other ways. Consequently, although her decision to use an illegal drug during these rituals demonstrated poor judgment and her last use of marijuana was in July 2009, her drug use has been infrequent and is unlikely to recur. Therefore, Drug Involvement Mitigating Condition 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) applies.

Applicant has not associated with the religious elders with whom she used marijuana at her first coven meeting in the early 2000s. She no longer has social interaction with the majority of the members of her since-disbanded coven. While she maintains a friendship with one former-coven congregant, that friend always chose to opt out of marijuana use during religious rituals and does not use drugs. While Applicant does not seek out a relationship with her step-father, who has used marijuana in her yard or around her premises during his visits, he does still visit. His last visit was in 2009. There is no evidence indicating that she has similarly cooled her relations with her stepsister. Consequently, AG ¶ 26 (b)(1) (disassociation from drug-using associates and contacts) applies with regard to Applicant’s former fellow religious congregants, but not with regard to her stepfather or stepsister.

Applicant has disbanded her coven. While she testified that she will not use marijuana at future rituals, she does plan to continue practicing her religion. Clearly, Applicant has every right to exercise her faith and the government has no interest in interfering with that practice. However, the apparently unavoidable presence of marijuana at such rituals, regardless of whether Applicant declines to use the illegal

³⁸ *Id.* at ¶ 24(a)(1-2).

³⁹ *Id.* at ¶ 24(b).

drug, obviates application of AG ¶ 26 (b)(2) (changing or avoiding the environment where drugs were used).

Applicant last used marijuana in about July 2009. There is no indication that Applicant has participated in a religious retreat ritual since that time, making it impossible to assess how she would successfully handle the presence of marijuana. Moreover, 15 months is an insufficient time to establish an appropriate period of abstinence in a case where the individual voluntarily used an illegal drug when its use was optional. Given these considerations, AG ¶ 16 (b) (3) (an appropriate period of abstinence) does not apply.

By letter of October 12, 2010, Applicant signed a statement of intent sufficient to raise AG ¶ 26 (b) (4) (a signed statement of intent with automatic revocation of clearance for any violation).

Applicant's direct testimony was generally consistent with the detailed answers she had previously provided with regard to her marijuana use, both in her teens and in more current religious practices. She was sincere in her motivations for using marijuana as part of her faith's rituals. At the time, she knew marijuana was illegal and its ritual use was optional. She showed similar sincerity while explaining that marijuana use did not help her attain the spiritual growth she has since found through other methods. She has flatly expressed her intent not to use marijuana again in the future and she has signed a statement of intent with automatic revocation of clearance for any future drug use.

Two concerns remain. First, Applicant, who previously maintained a security clearance, was fully aware that marijuana was illegal. Rather than follow the law, like her friend in the coven who regularly eschewed the optional use of marijuana, Applicant chose to follow her faith in those who encouraged her that marijuana use would help her become a better leader and make her more spiritually aware. While faith is a powerful and important inspiration, it is not an excuse for breaking the law, especially when the drug use was clearly not mandatory or essential to the ritual. Her choice not to follow her friend's example, or at least to evaluate its spiritual efficacy and cease using the drug in 2000 or 2002, is troublesome. It also presents valid questions regarding her judgment, trustworthiness, and reliability. Second, 15 months is too short a period for Applicant to have had the opportunity to demonstrate her ability to refrain from marijuana use in a future ritual setting. Given these concerns, drug involvement security concerns remain unmitigated.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the circumstances. An 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 a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the "whole-person" factors. Many factors speak highly in Applicant's favor. She is a highly credible, straightforward, and mature individual. Applicant is a college graduate. She served in the United States Army, where she successfully maintained a security clearance. Applicant and her husband have raised two children, advising them to make wise choices in their lives. She has been active in her faith, serving for a period of time as its local leader. She provided explicit details regarding her ritual use of marijuana in her SCA and during the investigative process. Applicant provided sufficient testimony and documentation to effectively explain and rebut the allegation that she and her husband used some of the marijuana they confiscated from their teen's bedroom in 2009, thus mitigating personal conduct security concerns.

What remains troubling is her repeated use of marijuana at rituals over a nine year period. Inasmuch as its ritual use was optional, sound judgment should have led her, as it apparently led her abstaining friend, to refrain from its ingestion. In using marijuana in 2000, 2002, and 2009, Applicant knew its use was illegal. She had made the affirmative choice to eschew the drug after high school. She had discouraged her children from its use. She had both her stepfather and stepsister only use it outside her home when they visited. In the 1980s, Applicant held a security clearance, a privilege predicated, in part, on the privilege-holder's adherence to the law and abstinence from illegal drugs. Applicant was fully aware that her marijuana use was illegal, incompatible with the standards expected of one seeking a security clearance, and conduct bound to raise security concerns. In spite of these considerations, she chose to use marijuana at rituals between 2000 and 2009 in full knowledge it was an optional experience.

Since at least the time she completed her September 2009 SCA, however, Applicant has concluded that marijuana does not help her attain the level of spiritual growth it was purported to yield. She came to this conclusion after using the drug in a 2000 ritual, in a 2002, ritual, and then, after a nine year break, in a July 2009 ritual. While it is recognized that personal awareness does not manifest itself on a standard timetable, the timing of Applicant's realization is somewhat suspect, despite her evident candor. Moreover, while Applicant insists she will refrain from the drug in the future and rely, instead, on alternative methods for ascertaining ritualistic enlightenment, she has not yet had the opportunity to demonstrate such restraint. While Applicant is highly credible and her expressed intent to eschew drugs in the future appears genuine, a period of less than two years of abstinence has provided insufficient time for her to

demonstrate the sound judgment, trustworthiness, and reliability expected of one seeking access to sensitive or classified information.⁴⁰ The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials. Given these reservations, drug involvement security concerns remain unmitigated. Clearance is denied.

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 E:	FOR APPLICANT
Subparagraph 1.a-1.d:	For Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraph 2.a-2.b:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant a security clearance. Clearance denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge

⁴⁰ Applicant's last use of marijuana was approximately 15 months ago.