



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



In the matter of:)
)
) ISCR Case No. 10-03602
)
Applicant for Security Clearance)

Appearances

For Government: Marc G. Laverdiere, Esquire, Department Counsel
For Applicant: Virginia M. Gomez, Esquire

April 22, 2011

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ Applicant's clearance is granted.

On 27 September 2010, the Defense Office of Hearings and Appeals (DOHA) sent Applicant a Statement of Reasons (SOR) listing security concerns under Guideline H, Drug Involvement.² Applicant timely answered the SOR, and requested a hearing. DOHA assigned the case to me 2 November 2010, and I convened a hearing 30 November 2010. DOHA received the transcript (Tr.) 7 December 2010.

¹Consisting of the Government exhibits (GE) 1-3 and Applicant exhibits (AE) A-P .

²DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive (DoD) 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the adjudicative guidelines (AG) effective within DoD on September 1, 2006.

Findings of Fact

Applicant admitted the SOR allegations, except for SOR 1.a. She is a 30-year-old disaster assistance support program training coordinator employed by a defense contractor since January 2010. She has never had a clearance.

When Applicant applied for a clearance in January 2010 (GE 1), she reported a history of marijuana use from January 2003 to October 2009 (within the last seven years). She also reported cocaine use from March 2004 to August 2005. She discussed her drug use with a Government investigator in March 2010 (GE 2) and responded to Government interrogatories in September 2010 (GE 3).

Applicant began using marijuana in summer 1999, just before she started college. She estimates she used marijuana about four times per year while in college, but because she was a two-sport competitive athlete during college, most of her marijuana use occurred during summer, or at end-of-season sports parties. After college, her marijuana use ranged from twice a month to once or twice a year (Tr. 32). She bought user amounts of marijuana four times, spending \$40-50 each time, although she may have spent \$100 on one occasion. She last used marijuana on Halloween 2009. She stopped because she realized her marijuana use was irresponsible and childish, and she thought it was time to start living an adult lifestyle.

Applicant used cocaine five times total on two occasions, one in 2004 and one in 2005. In late 2003, she had moved to a different city to pursue a career in emergency preparedness. She had an unpaid internship for a few months, and then worked at a restaurant for 18 months to earn a living. She did not have any friends in the area and was lonely. Some of her coworkers at the restaurant encouraged her to try cocaine, which she did in 2004. She tried it again in 2005, which was when she realized she did not want to be part of the crowd that used cocaine. She stopped using cocaine and no longer sees any of the coworkers with whom she used the drug.

Applicant got engaged to be married in December 2009. She and her fiancé began dating in 2006, but broke up in early 2009—in part over her fiancé's opposition to her marijuana use (AE N). They did not get together again until after she decided she wanted to live a drug-free lifestyle. In late 2009, she sought psychological counseling for career and relationship issues, and her past drug use. Her psychologist found she did not have a substance abuse problem and concluded that Applicant was committed to a healthy lifestyle, both for personal and professional reasons (AE F).

Applicant had an excellent academic record in graduate school (AE A), received special recognition when she was employed by a state (AE B) and a county (AE C) government. She had an outstanding performance rating (4.75/5.0) with the county government (AE E). Applicant's personal and professional references, both past and present, consider her honest and trustworthy. They recommend her for her clearance although one (AE H) recites no knowledge of her drug history and the rest (AE G, I, J, K, L, and M) record only that they are aware she has a drug history. Applicant has

executed a statement of intent to not use drugs as contemplated by the Directive (AE O). She credibly testified that she intends to abstain from drug use in the future.

Policies

The adjudicative guidelines (AG) list factors to evaluate a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also show a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). The applicability of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific guidelines should be followed when a case can be measured against them, as they are policy guidance governing the grant or denial of a clearance. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline H (Drug Involvement).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, disputed facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the required judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels deciding any reasonable doubt about an Applicant's suitability for access in favor of the Government.³

Analysis

The government established a case for disqualification under Guideline H, by demonstrating Applicant's sporadic marijuana use and purchase between summer 1999 and October 2009, and her cocaine use in 2004 and 2005.⁴ However, Applicant mitigated the security concerns. Applicant last used cocaine over five years ago; she last used marijuana over a year ago. Her drug use was infrequent, and the cocaine occurred under circumstances unlikely to recur. Given her excellent academic and work records, her drug use does not cast doubt on her judgment, reliability, or

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴¶25.(a) any drug abuse ; (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;

trustworthiness.⁵ Further, she has demonstrated intent to not abuse drugs in the future by her abstinence, by no longer associating with her drug-using associates, and avoiding the environment where drugs were used.⁶ Finally, she executed the statement of intent contemplated by the Directive. Most important, her recent engagement gives her very strong reasons for maintaining a drug-free lifestyle, stronger perhaps than her need to keep a clearance. Applicant is unlikely to use drugs in the future. Accordingly, I resolve Guideline H for Applicant.

Formal Findings

Paragraph 1. Guideline H: FOR APPLICANT

Subparagraph a-c: 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 granted.

JOHN GRATTAN METZ, JR
Administrative Judge

⁵¶ 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 [Emphasis supplied];

⁶¶ 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;