



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



In the matter of:)	
)	
)	ISCR Case No. 10-07662
)	
Applicant for Security Clearance)	

Appearances

For Government: Phillip J. Katauskas, Esquire, Department Counsel
For Applicant: *Pro se*

06/01/2012

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the security concern that was generated by her history of illegal drug use. Clearance is granted.

Statement of the Case

On January 25, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on March 1, 2012, admitting the allegations. She requested a hearing, and the case was assigned to me on April 13, 2012. On April 30, 2012, a notice of hearing was issued scheduling the case for May 16, 2012. The

hearing was conducted as scheduled. I received three Government exhibits (GE 1-3), six Applicant exhibits (AE A-F) , and Applicant's testimony. The transcript was received on May 23, 2011.

Findings of Fact

Applicant is a 48-year-old, single woman with one child, age 18. Applicant worked her way through college in the mid-1980s, earning a bachelor's of general studies in engineering and business in 1987. She earned a master's of business degree in the field of information systems in 2006.

Applicant has worked in the information technology and business development field since 1990. Since then, her responsibilities have progressively increased. Currently, she is the business development manager for a company that has some government clients. (Tr. 20) This is her first application for a security clearance. (Tr. 25)

Applicant is highly respected on the job and among her friends. According to a friend and former coworker, Applicant has an "open and direct" personality and is "honest to a fault." (AE A) According to another friend, Applicant, a single parent, successfully balanced her career with raising her daughter, currently on the dean's list in college. (GE C)

During Applicant's daughter's childhood, she was actively involved in her extracurricular activities. For example, she was an avid "soccer mom" who served as the soccer team travel manager. (Tr. 23) Although the father of Applicant's child steadily paid child support, he has a limited relationship with her.

Applicant used marijuana from her mid-teens in the early 1980s to 2009. She started in high school. (Tr. 22) She stopped briefly while in college after getting a job as a delivery driver. Since finishing college, Applicant has occasionally smoked marijuana at a jazz festival, held annually, with old friends with whom she would run into at the festival. (Tr. 24) She characterizes her marijuana use as rare because she did not go to the jazz festival every year, and she sometimes went with her daughter.¹ Applicant never purchased the marijuana on the occasions she used it at the jazz festival. Instead, she would typically share a cigarette with two or three people. (GE 2 at 5)

Since Appellant's daughter was born in 1993, she "could count on one hand" the amount of times that she has used marijuana. (Tr. 24) Applicant's last use of marijuana was in 2009.

Applicant used cocaine twice in her life. The first time was in the mid-1980s, and the most recent time was in 2004 with an ex-boyfriend. (Tr. 24) She had an adverse physical reaction on both occasions. Applicant executed an affidavit swearing not to use marijuana or any other illegal drugs in the future.

¹Applicant has never smoked marijuana around her daughter. (Tr. 24)

Policies

In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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. 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 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."

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 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

Guideline H, Drug Involvement

Under this guideline, "use of an illegal 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 ¶ 24) Applicant's use of marijuana and cocaine triggers the application of AG ¶ 25(a), "any drug abuse."

Applicant's drug use was infrequent, and she has executed an affidavit promising never to use illegal drugs again. AG ¶ 26(a), "the behavior . . . was so infrequent . . . that it is unlikely to recur or does not cast doubt on the individual's reliability, trustworthiness, or good judgment," and AG ¶ 26(b)(4), "a demonstrated intent not to abuse any drugs in the future, such as . . . a signed statement of intent with automatic revocation of clearance for any violation," apply.

Whole-Person Concept

Under the whole-person concept, 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.

Applicant's involvement with illegal drugs cannot be characterized as youthful experimentation. She used cocaine once within the past ten years, and used marijuana as recently as 2009. Conversely, the cocaine use in 2004 represented the only time she has used it since 1990, and she has used marijuana less than five times in the past 18 years. Applicant asserts that she will never abuse illegal drugs again. The infrequency of Applicant's drug use, her success on the job, and her success in raising her daughter, a college honor student, bolster the credibility of this assertion. I conclude that the recency of the drug use is outweighed by its infrequency. Upon considering this case in the context of the whole-person concept, I conclude that Applicant has mitigated the security concern.

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
Subparagraphs 1.a - 1.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge