



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



In the matter of:)	
)	
)	ISCR Case No. 10-08056
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Gregg A. Cervi, Esquire, Department Counsel
For Applicant: *Pro se*

May 23, 2011

Decision

MASON, Paul J., Administrative Judge:

In view of Applicant’s regular marijuana use from July 2003 to January 2010, she bears a heavy burden of persuasion to show that she has no intention of resuming marijuana use. She has not presented sufficient evidence to establish she will forego all drug use in the future. Eligibility for access to classified information is denied.

Statement of the Case

Applicant completed and certified her Electronic Questionnaire for Investigations Processing (e-QIP, GE 1) on July 19, 2010. She was interviewed by an investigator from the Office of Personnel Management (OPM) on August 18, 2010. (GE 6) In her interrogatory answers submitted to the Government on November 18, 2010, Applicant agreed with the investigator’s summary of her August 2010 interview, and that it could be used in a security clearance hearing to determine her security suitability. (Interrogatory answers, GE 6)

On December 30, 2010, DOHA issued 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) implemented by the Department of Defense on September 1, 2006.

Applicant submitted her notarized answer to the SOR on January 4, 2011. 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 February 2, 2011. She received the FORM on February 9, 2011. In an attachment to the FORM, Applicant was advised she could object to the information in the FORM or submit additional information in explanation or extenuation. Her response was due on March 11, 2011. No response was received. The case file was assigned to me on April 27, 2011.

Findings of Fact

The SOR lists three allegations under drug involvement. Applicant admitted all three allegations. She is 62 years old, divorced and has one child, 32 years old. In March 1985, she was awarded a bachelor's degree in an unidentified field. She has been employed as a purchasing manager by a defense contractor since June 2007. From May 1999 to January 2007, Applicant was a commodity manager.

Applicant was interviewed by an OPM investigator on August 18, 2010 about her drug use that she disclosed in her e-QIP. Applicant used marijuana from July 2003 to January 2010. She ingested the drug through a pipe approximately twice a week. She used the drug to relax while she was watching television. She also purchased the drug, but did not indicate the number times. She tried to grow the drug because she did not want to purchase it. She indicated she was not dependent on the drug. She stopped using the drug because it interfered with her work. Applicant has never tried to manufacture, sell, or traffic the drug.

Applicant has been employed as a purchasing manager for over four years. She did not provide evidence about her job performance. She did not provide any evidence concerning her lifestyle away from the job, particularly independent evidence that shows why Applicant turned away from marijuana use after more than six years.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. Each guideline lists potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

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 careful, 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture. 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 ¶ E3.1.14., 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

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.

From July 2003 to January 2010, Applicant regularly used marijuana. Because of her more than six-year period of use, it is fair to infer she enjoyed the drug's effect. It is also fair to infer that she purchased the drug on a regular basis. Trying to grow the marijuana plant in 2009 suggests that Applicant was uneasy about purchasing the drug. AG ¶ 25(a) (*any drug use*) applies. In order for the user to ingest marijuana, the user has to possess the illegal drug. AG ¶ 25(c) (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia*) also applies.

The two relevant mitigating conditions under ¶ 26 of 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 a signed statement of intent with automatic revocation of clearance for any violation*).

Using marijuana for over six years at a frequency of twice a week constitutes regular illegal drug use. The marijuana use did not end until 16 months ago. Applicant's past marijuana use continues to cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 26(a) does not apply.

Regular use of marijuana for over six years calls for more than a simple unsupported statement that a person has no intention to resume marijuana use in the future. The evidence does not convince me that Applicant has severed her ties from her drug suppliers. Applicant may have changed her environment where drugs are used, but she has not produced independent evidence to establish this change.

The Directive does not define the time required to satisfy an appropriate period of abstinence from illegal drug use. Suffice it to say that a six-year period of regular drug use cannot easily be mitigated without substantiating evidence from independent sources regarding this element and the other three elements of AG ¶ 26(b). Having carefully considered the evidence that Applicant has furnished under AG ¶¶ 26(a) and 26(b), her use and purchase of marijuana has not been mitigated.

Whole-Person Concept

This recommended 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.

I have evaluated the facts of this case in conjunction with the disqualifying and mitigating conditions of the AG. I have found against Applicant under the drug involvement guideline. I have also assessed this case under the nine general factors of the whole-person concept.

Applicant is 62 years old. She received a bachelor's degree in 1985. She has been working as a purchasing manager at her current job since July 2007. For more than three years at her previous job, and for more than three years at her present job, she has engaged in the illegal use of marijuana. The frequency of use was approximately twice a week. She found the drug to be relaxing as she watched television. (AG ¶ 2(a)(1), AG ¶ 2(a)(2), (AG ¶ 2(a)(3)) Applicant was between 54 and 61 years old when she voluntarily used the drug. (AG ¶ 2(a)(4), AG ¶ 2(a)(5))

