



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



In the matter of:)	
)	
)	ISCR Case No. 11-02252
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: W. Jamiel Allen, Esquire

02/29/2012

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is granted.

Statement of the Case

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP) on November 2, 2010. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on September 14, 2011, detailing security concerns under Guideline H, drug involvement, and Guideline E, personal conduct. 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 For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant received the SOR on September 29, 2011. Applicant retained counsel and answered the SOR on November 22, 2011. She requested a hearing before an administrative judge. DOHA received the request, and Department Counsel was prepared to proceed on December 1, 2011. I received the case assignment on December 12, 2011. DOHA issued a Notice of Hearing on December 30, 2011, and I convened the hearing as scheduled on January 24, 2012. The Government offered exhibits marked as GE 1 through GE 3, which were received and admitted into evidence without objection. Applicant and one witness testified. She submitted exhibits marked as AE A through AE K, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on February 2, 2012. I held the record open until February 14, 2012, for Applicant to submit additional matters. Applicant timely submitted AE L and AE M, which were admitted without objection. The record closed on February 14, 2012.

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegation in ¶ 1.c of the SOR. Applicant admitted in part and denied in part the factual allegations in ¶¶ 1.a and 1.b of the SOR. Her admissions are incorporated herein as findings of fact. She denied the factual allegation in ¶ 2.a of the SOR.¹ She also provided additional information to support her request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 27 years old, works as a mechanical engineer for a Department of Defense contractor. She began her employment in the summer of 2004, as an intern. At the end of the summer in 2004 and 2005, in lieu of resigning, she took a leave of absence from her job. At the end of the summer in 2006, she continued to work part-time during the school year. In July 2007, she began working full-time for her employer.²

Applicant's supervisor describes her as a dedicated, hard working individual, with initiative. She is honest, trustworthy, a person of integrity, and a team player. He completely trusts her. She is the alternate security custodian for his team's secret cabinet, which requires her to ensure that all their classified documents are properly marked for security audits and that their cabinet is secured at night. She has received awards for her outstanding job performance and for her team performance and

¹When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

²GE 2; AE A; Tr. 40-41, 43, 52.

achievement. Her performance appraisals reflect consistent outstanding performance every year.³

As a high school student and freshman college student, Applicant occasionally smoked marijuana with friends. She stopped smoking marijuana around October 2002 because her boyfriend did not approve. After an eight-month break, she again occasionally smoked marijuana with her girlfriends. She last smoked marijuana in December 2003. She has no intent to smoke marijuana in the future, as she does not like it.⁴

Applicant's employer asked her to complete a security clearance application (SF-86) shortly after she began her summer internship in 2004. She listed marijuana use between August 2000 and October 2002 and estimated she smoked it about 15 times. After completing her SF-86, she took a drug test and passed. Sometime during the summer of 2004, she learned that her employer had a policy against drug use. DOD granted Applicant a security clearance in 2005.⁵

Between the summer of 2006 and early 2007, Applicant used cocaine on four occasions, and she used Vicodin without a prescription. Two friends provided her with the Vicodin and the cocaine. She has not used either drug since this time. Her explanation for using these drugs is that she was young and depressed. She further explained that she was unsure of her life and its direction at this time. She listed this drug use and her 2003 marijuana use on her 2010 e-QIP, which is all of her drug use after 2004. She acknowledges that her decision to use cocaine was not a good decision.⁶

Applicant signed a statement of intent not to use illegal or nonprescription drugs in the future. She swore that she is not currently using drugs and agreed to an automatic revocation of her clearance if she did. In her response to interrogatories, Applicant stated that she stopped using illegal drugs because their use was destructive and irresponsible behavior, which hurt her, her family and her future. She declined to excuse her conduct, which she related to youth, immaturity, confusion, and depression. She indicated that she learned from her conduct and that she has a better understanding of herself, a fact she reiterated in her testimony.⁷

Applicant has never been arrested for illegal drug use. She has never received drug counseling nor has she attended narcotics anonymous. In early January 2012,

³AE B - AE H; AE J; Tr. 49-50.

⁴Tr. 42-43, 51, 57-58, 66.

⁵GE 1; Tr. 42-43, 55-58.

⁶GE 2; Tr. 45-48, 57-60.

⁷GE 3; AE L; Tr. 51, 66.

Applicant, on her initiative, sought a drug evaluation from a qualified drug counselor. She met with the counselor twice and took the Substance Abuse Screening Inventory (SASI). Based on their meetings and the test results, the counselor opined that she did not have a substance abuse disorder as defined in the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR). The counselor also recommended her for a security clearance. A counselor in 2010 stated that Applicant did not have a condition that would impair her judgment, reliability, or ability to protect classified information. This counselor indicated that Applicant had a “good prognosis” without further explanation.⁸

Applicant’s long-time boyfriend testified. He and Applicant have known each other since college and have dated for the last six or seven years. He describes Applicant as an organized person, who reacts positively to stress. He characterizes Applicant as the most trustworthy person he knows. She has never failed him or others. She plays by the rules. He highly respects her. He is aware of her past drug use, which he relates to a low point in her life. Drug use is not characteristic of her normal behavior. He has not seen her use drugs or currently associate with drug users. He describes her friends as “good girls”. Her integrity is her best quality, and her honesty is the reason for the hearing. When she realized in college that she had an emotional problem, she sought professional help, started exercising, and began working on hobbies. She is more mature.⁹

She still has contact with the two friends with whom she used drugs. Her two friends no longer use any drugs. One is married with two step-children and working full-time. The other works as a teacher one thousand miles from Applicant’s home.¹⁰

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. 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,

⁸AE I; AEK ; AE M; Tr. 64-66.

⁹Tr. 28-37.

¹⁰Tr. 60-61.

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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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. . . .” An applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

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 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 an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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).

Analysis

Guideline H, Drug Involvement

AG ¶ 24 expresses the security concern pertaining 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, as amended (e.g.,

marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), 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.

AG ¶ 25 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

(a) any drug abuse (see above definition);

(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;

(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence;

(e) evaluation of drug abuse or drug dependence by a licensed clinical social worker who, is a staff member of a recognized drug treatment program; and

(g) any illegal drug use after being granted a security clearance.

Applicant smoked marijuana occasionally as a high school student and during her first two years of college. In 2006, she used cocaine four times and Vicodin without a prescription, after being granted a security clearance in 2005. To use these drugs, she had to possess them. Applicant has never been diagnosed as a drug abuser or drug dependent. Thus, AG ¶¶ 25(d) and 25(e) are not applicable in this case. AG ¶¶ 25(a), 25(c), and 25(g) are applicable under the facts of this case.

AG ¶ 26 provides conditions that could mitigate security concerns. I have considered mitigating factors AG ¶ 26(a) through 26(d), and the following are potentially applicable:

(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

(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; and,

(4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant last smoked marijuana more than eight years ago. Her use of cocaine and Vicodin without a prescription occurred more than five years ago. All of her drug use took place while a high school or college student and ceased before she completed college. She used drugs with two specific friends with whom she still has contact. These friends are no longer involved with drugs, and one friend lives more than 1000 miles from Applicant, which limits their ability to spend time together.

Applicant submitted a signed sworn statement, indicating that she was not currently using any illegal drugs, that she had no intent to use illegal drugs in the future, and that she agreed to the immediate revocation of her security clearance if she did. Her recent drug use evaluation by a qualified professional supports the fact that she is not drug dependent.

As an immature college student, she experimented with cocaine and Vicodin without a prescription while she held a security clearance. Her decision and conduct violated the trust of her employer and the Government and raised questions about her reliability to follow rules. In the last five years, she has worked hard to change her behavior and has done so successfully. While still in college, she realized that she was depressed and making poor decisions, especially about her drug use. She sought help for her depression and lack of goals about her future. She started exercising and working with her hobbies, which are alternative methods to drugs for handling stress and emotional issues. Her employer trusts her as does the person closest to her, her boyfriend. She is a highly skilled engineer and well-respected at work for her skills. She handles classified information without incident. In weighing her current behavior and her efforts for the last five years to correct poor decisions about drugs in 2006 against her violation of the trust of the Government, I find the weight of the evidence supports a finding that she has mitigated the Government's security concerns under Guideline H about her past conduct.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information;

(2) disruptive, violent, or other inappropriate behavior in the workplace;

(3) a pattern of dishonesty or rule violations; and,

(4) evidence of significant misuse of Government or other employer's time or resources.

and,

(g) association with persons involved in criminal activity.

Applicant experimented with cocaine and Vicodin without a prescription as a college student and while she held a security clearance. She used these drugs with two girlfriends during a time of depression and lack of direction in her life. Her conduct violates the rules of the Government and her employer about the use of illegal drugs, particularly when holding a security clearance. Possession of illegal drugs is criminal activity. The Government established its case under AG ¶¶ 16(d)(3) and 16(g).

AG ¶ 17 provides conditions that could mitigate security concerns. I have considered mitigating factors AG ¶ 17(a) through 17(g), and the following are potentially applicable:

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and,

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant has been forthright about her conduct with drug use as a college student. By early 2007, she recognized that she had an emotional problem and that drugs were an inappropriate means to resolve her problem. She sought professional help, and worked on changing her techniques for managing her emotional issues. She turned to positive behavior changes, such as exercising and hobbies, to improve her emotional health and to reduce stress. She has a good emotional support system with her family, her boyfriend, and her friends, which eliminates her need to resort to drug use. While she still has contact with the two friends with whom she used drugs in college, one lives 1,000 miles from her. Her life and her friends' lives no longer involve drugs, but are directed towards their careers or family. After reviewing all the evidence of record, I find that Applicant has changed her attitude and behavior about drug use. Thus, she has mitigated the Government's security concerns under Guideline E.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all relevant circumstances. 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. As a high school student and for her first two years of college, Applicant smoked marijuana occasionally. During her last year of college and at an emotional low point, she experimented with cocaine and Vicodin with two friends. She recognized that she had an emotional problem and sought professional help. With professional help, she changed her attitude, behavior, and conduct towards drug use. Drugs are no longer a part of her life and she does not intend for drugs to be a part of her life in the future. While still in college, she recognized that using illegal drugs was destructive and irresponsible behavior, which hurt her, her family and her future. She does not make any excuses for her conduct. Her 2006 decision to use cocaine and Vicodin while holding a security clearance showed poor judgment and betrayed the Government's trust. She acknowledged her conduct on her SF-86, which indicates her honesty, and she accepted responsibility for her poor judgment. Her life is completely different now. Her family, her boyfriend, and her career are paramount, and illegal drugs have no place in her life. She complies with her workplace rules and is trusted with duties tied to the office security cabinet. In reviewing all the evidence of record, there is almost no likelihood she will ever use illegal drugs in the future because she has recognized the negative impact of such drug use. There is no security concern that she will be involved with illegal drugs. She could not be pressured or coerced to disclose classified information based on her conduct in 2006 because she has been open and honest about it.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her drug involvement under Guidelines H and E.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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 a security clearance. Eligibility for access to classified information is granted.

MARY E. HENRY
Administrative Judge