



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



In the matter of:)	
)	
-----)	ISCR Case No. 11-03446
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Esquire, Department Counsel
For Applicant: *Pro se*

08/16/2012

Decision

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

On May 11, 2012, 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 G (Alcohol Consumption). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In a response dated May 21, 2012, Applicant admitted all allegations raised in the SOR and requested a hearing. DOHA assigned the case to me on June 19, 2012. The parties proposed a hearing date of July 17, 2012. A notice setting that date for the hearing was issued on June 25, 2012. I convened the hearing as scheduled. Applicant testified, presented two witnesses, and offered 10 exhibits (Exs.), which were accepted into the record without objection as Exs. A-J. Department Counsel offered four documents, which were admitted as Exs. 1-4 without objection. The transcript (Tr.) of the proceeding was received on July 25, 2012, and the record was closed. Based on a review of the testimony, submissions, and exhibits, I find Applicant failed to meet her burden with regard to personal conduct (Guideline E). Clearance is denied.

Findings of Fact

Applicant is a 52-year-old director of operations who has worked for the same defense contractor or its predecessor for over 20 years. She has been in her present position since May 2006. She rose to her current position through merit, earning the respect of her colleagues in the process. Applicant has earned a bachelor's degree in marketing and a graduate business degree. She is married with two college-age sons.

In approximately 1979, Applicant began consuming alcohol. At times she drank to excess and to the point of intoxication. She continued such use of alcohol until at least May 2011.

In the interim, during the winter of 2002, Applicant attended a crowded neighborhood party. Guests were drinking, playing pool, and generally enjoying themselves. Applicant, who had consumed several alcoholic beverages, went outside with a group of people, some of whom she knew. A guest produced a marijuana cigarette and Applicant proceeded to "take a puff of it."¹ At the time, Applicant was 42 years old and had held a security clearance since the early 1990s.² Not a regular drug abuser, she had not been around illegal drugs like marijuana since attending college in about 1979 or 1980. Applicant knew marijuana posed security concerns. Since she was consuming alcohol, her security clearance was not uppermost in her mind.³ For her to use marijuana was "extremely unusual."⁴ She did not later discuss the incident with her husband or report the incident to either her security officer or her supervisor.

In about 2004, Applicant found a small bag of marijuana in her driveway. She assumed it had been lost by someone working for her lawn service. She called and complained to the service that she had found the drug on her property. Because she had two children at home, she hid the drug in her kitchen, then forgot about it. After rediscovering it in her kitchen sometime between 2006 and 2008, she disposed of it.⁵

On October 10, 2006, Applicant certified the answers she provided on an electronic questionnaire for investigations processing (e-QIP). Section 24(a) queried whether she had illegally used any controlled substances, for example marijuana, since the age of 16 or in the preceding seven years. Section 24(b) asked whether she had ever illegally used a controlled substance while employed as a law enforcement officer, prosecutor, or courtroom official; while possessing a security clearance; or while in a

¹ Tr. 41.

² It appears Applicant was first granted a security clearance in about 1992, with renewal applications in about 1997, 2001, and 2006. In 2009, she applied for access to sensitive compartmented information. Tr. 54-56.

³ Tr. 43.

⁴ Tr. 62.

⁵ Tr. 65.

position directly and immediately affecting the public safety. Applicant answered “no” to these questions.

At the hearing, Applicant stated that she typically completed security clearance renewal applications by taking her previous application and copying the answers directly onto the current application, noting “because there’s so much information there, you know, [such as] my father-in-law’s address, or you know, things like that.”⁶ In using this method, she did not read the questions carefully.⁷ She also noted that because she did not consider herself to be a drug abuser, and since the one incident was an isolated incident from her past, she simply forgot about the 2002 incident.⁸ She stated that had she remembered the incident, she would have disclosed it.⁹

Applicant certified her answers on a questionnaire for national security positions (QNSP) on May 5, 2009. This application uses the Standard Form 86 format, as revised in July 2008, but it varies from the e-QIP, which also uses a Standard Form 86 format, in terms of question numbering and wording.¹⁰ On the QNSP, she denied ever illegally using a controlled substance while possessing a security clearance. Again, Applicant stated that she had forgotten the isolated incident from winter 2002. She knew that giving false information on such forms could be considered a crime. She testified that she felt confident with her answers at the time.¹¹

On October 7, 2009, Applicant was interviewed as part of the investigative process initiated by her May 2009 application. This included a polygraph test. At that time, she disclosed she had used marijuana at a 2002 winter party.¹² She also reported that she had a top secret clearance at the time, and knew that she was breaking the

⁶ Tr. 44, 57, 68.

⁷ Tr. 56-57.

⁸ Tr. 41-44.

⁹ Tr. 41.

¹⁰ For example, the e-QIP gathers information about relatives at Section 14/15, while the QNSP poses a similar inquiry at question 18. Section 24 of the e-QIP inquires about drug use “since the age of 16 or in the last 7 years,” certain drug transactions in the preceding seven years, and whether the applicant has used drugs while holding a security clearance. It is less comprehensive than the QNSP question 23, which inquires about drug use, counseling, treatment, possession, purchase, trafficking, etc. in the preceding seven years and asks whether drugs were ever used while maintaining a security clearance. Furthermore, the QNSP varies elsewhere. For example, it has a question (27) regarding use of technology systems that had no parallel question in Applicant’s e-QIP. *Compare generally* Exs. A (e-QIP) and B (QNSP).

¹¹ Tr. 60.

¹² Applicant testified that she “didn’t recall the incident of 2002 until [she] was under polygraph. . . .” Tr. 57. She stated that she felt her loyalty was at issue, and that prompted her to think back on past associations and incidents in her life that she had forgotten. Tr. 58.

law in using the drug.¹³ During questioning, issues arose concerning her use of alcohol which led to a referral for a psychological evaluation.

After her referral, in approximately July 2010, Applicant was diagnosed by a licensed psychologist with alcohol abuse. Following that diagnosis, Applicant became more conscious of her alcohol use. She reduced her alcohol consumption and now moderates her drinking.¹⁴ On her own volition, Applicant was re-evaluated in June 2012 by a psychiatrist. He found that Applicant does not currently meet the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-IV) criteria for alcohol abuse.¹⁵ In addition, he described her use of alcohol as “responsible.”¹⁶

Policies

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the revised 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. . . .”¹⁷ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.¹⁸

¹³ Ex. 4 (Interrogatories, Clearance Decision Statement of Sep. 24, 2010, at 1).

¹⁴ Tr. 46.

¹⁵ Ex. B (Doctor’s evaluation, dated Jun. 26, 2012).

¹⁶ *Id.*

¹⁷ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

¹⁸ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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). The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.¹⁹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.²⁰

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.²¹ 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.²²

Here, Applicant failed to report that she used marijuana both within seven years of certifying her 2006 e-QIP and while maintaining a security clearance. She similarly failed to disclose she had used marijuana while maintaining a security clearance on a 2009 application. If such failures were intentional, 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 responsibilities*) would apply.

¹⁹ *Id.*

²⁰ *Id.*

²¹ AG ¶ 15.

²² *Id.*

While at a party in the winter of 2002, Applicant imbibed alcohol and used marijuana. At the time, she had maintained a security clearance for about a decade. Applicant knew that marijuana was illegal. She knew that marijuana and other illegal drugs posed a security concern. She knew that using marijuana could jeopardize her security clearance. Despite these factors, she used the drug. She then failed to help remedy the situation by immediately notifying her superiors or security officer.

In completing security-related applications in 2006 and 2009, Applicant failed to disclose the 2002 marijuana incident, an incident that occurred while she maintained a security clearance. At the hearing, she offered two main reasons for doing so. First, she stated that she simply copied her answers to questions from her previous applications onto her current applications, failing to read the questions carefully. Second, she stated that she forgot about the incident because her exposure to marijuana was such a unique, isolated incident in her otherwise non-drug-using adulthood.

The argument that Applicant simply transposed security clearance application answers from form to form over the years glosses over the fact such forms are regularly revised. Wording often changes and the sequence of questions can be altered, thus demanding an applicant's attention in making updates. This is particularly true with regard to the questions concerning past drug use at issue. While reliance on old applications can be helpful as a resource for addresses and dates, an experienced applicant who merely transposed answers without due care would demonstrate questionable judgment and reliability. In this case, however, Applicant testified that she was comfortable with the answers she provided, yet conceded that she may not have read the questions carefully before providing answers.

_____ Furthermore, Applicant argues that because the 2002 incident was an isolated one, and since she had otherwise not been around marijuana since college, the incident was not currently in her memory when she completed the 2006 and 2009 applications. While it is equally arguable that such an extraordinary departure from her norm should have stood out in her mind, it would seem her 2004 complaint regarding a found quantity of the drug should have freshened her memory regarding her own 2002 transgression, especially when that cache was rediscovered between 2006 and 2008.

Finally, Applicant explained that it was the stress stemming from questions regarding her loyalty in 2010 that finally prompted her to search her memory and recall the 2002 incident. This argument is double-edged. On the one hand, the prospect of a polygraph test is intimidating. Fear of failing it – or being caught in a lie – is not uncommon. As a result, previously hidden truths may be revealed due to fear that an inaccurate answer might trigger concerns regarding veracity. On the other hand, it suggests that Applicant was less than diligent when she completed the 2006 and 2009 applications. Candor and reliability should not be dependent on the threat of a polygraph examination or the feeling one's loyalty is being questioned. This process demands a higher-than-average degree of solid judgment, trustworthiness, and reliability at all times. cursory and thoughtless application answers fulfill neither the purpose nor the spirit of the security clearance application and investigatory process.

Assuming Applicant truly forgot about her 2002 marijuana use when she completed her 2006 and 2009 applications, neither haste in completing the applications nor robotic transposition of serious security clearance answers is sufficient to raise Personal Conduct Mitigating Condition AG ¶ 17(c) (*the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.* (emphasis added). At best, Applicant's admission in 2010 to her 2002 marijuana use potentially raises AG ¶ 17(e) (*the individual has taken positive steps to reduce or eliminate the vulnerability to exploitation, manipulation, or duress*). None of the other mitigating conditions apply.

Guideline G – Alcohol Consumption

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.²³ In this case, Applicant was diagnosed as an alcohol abuser in 2010. She admits that she drank in excess and to the point of intoxication on multiple occasions. On one occasion when she was drinking, Applicant illegally used marijuana while maintaining a security clearance. These facts are sufficient to raise Alcohol Consumption Disqualifying Conditions AG ¶ 22(a) (*alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent*) and AG ¶ 22(c) (*the habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent*). Consequently, the burden shifts to Applicant to mitigate related security concerns.

Following her 2010 diagnosis of alcohol abuse, Applicant reevaluated her use of alcohol. Consequently, she reduced her alcohol consumption and now self-monitors her alcohol use. Today, she responsibly uses alcohol in moderation. Moreover, after evaluation by a psychiatrist in 2012, it was found that Applicant no longer qualifies under the criteria set forth in the DSM-IV as an alcohol abuser. Therefore, I find that Alcohol Consumption Mitigating Condition AG ¶ 23(b) (*the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser)*) applies.

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). Under AG ¶ 2(c), the ultimate

²³ AG ¶ 21.

determination of whether to grant a security clearance must be an overall commonsense judgment based on 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. Applicant is a mature and well-educated woman. She has been successful in her work and has won the admiration of her colleagues. At the time she used marijuana while maintaining a security clearance, she was in her 40s, was the mother of two growing children, knew that marijuana was illegal, and knew that drug abuse was inconsistent with the security clearance she had maintained for about a decade. Despite these considerations, she failed to promptly report what might otherwise have been considered a redeemably isolated incident to her security officer or superiors. Then, in 2006 and 2009, either through convenience or memory lapse, she failed to report her illegal marijuana use in 2002.

Applicant’s main explanation as to why she failed to report her 2002 drug lapse on subsequent security clearance applications is that she failed to recall the incident while she somewhat reflexively transposed old application answers onto new application forms without reading the questions carefully. She testified that it was only under aggressive interviewing in 2010 during a polygraph that she gave the questions sufficient thought to recall the incident. Taking her at her word, this explanation is troubling. The security clearance investigative process demands a certain level of candor, trustworthiness, and reliability. Those demonstrated qualities help form the underlying basis of the fiduciary relationship created by the granting of a security clearance. Here, either Applicant actively concealed the 2002 incident until confronted with the prospect of a 2010 polygraph test, or she failed, both in 2006 and in 2009, to reliably, candidly, and diligently answer significant investigatory questions. In either situation, her explanation fails to allay security concerns regarding her personal conduct. This is particularly true given that her concealment or oversight in 2006 was repeated as recently as 2009 and the truth not revealed until 2010. Under this chronology, two years is insufficient to reestablish the trust intentionally or negligently breached.

When security concerns were raised with regard to Applicant’s alcohol use, she was referred for examination. Confronted by a 2010 diagnosis of alcohol abuse, she assessed her alcohol use before making changes in her life. She began moderating her drinking and now drinks responsibly. She underwent an examination in 2012 by a qualified psychiatrist who found that she did not meet the criteria for an alcohol abuser. Given her efforts at rehabilitation and medical corroboration that those efforts were successful, I find that alcohol consumption security concerns are mitigated. However, given the clearly consistent standard stated above, presently unmitigated personal conduct security concerns warrant a denial of security clearance. 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraphs 2.a-2.c:	For Applicant

Conclusion

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

ARTHUR E. MARSHALL, JR.
Administrative Judge