



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



In the matter of:)
)
-----) ISCR Case No. 11-10786
)
Applicant for Security Clearance)

Appearances

For Government: Candice Garcia, Esq., Department Counsel
For Applicant: *Pro se*

05/24/2013

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for a security clearance to work in the defense industry. The evidence shows she has a history of drug abuse (marijuana use for the most part) beginning in 2005 and ending in January 2011. She presented sufficient evidence to explain and mitigate the concerns about her fitness and suitability to hold a security clearance. For the reasons discussed below, this case is decided for Applicant.

Statement of the Case

On October 31, 2012, the Department of Defense (DOD) sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant her access to classified information.¹ The SOR is similar to a complaint, and it detailed the reasons for the action under the security guideline known as Guideline H for drug involvement.

Applicant timely answered the SOR and requested a hearing. The case was assigned to me on April 5, 2013. The hearing took place by video teleconference as scheduled on May 7, 2013. The record was held open to allow Applicant to submit an additional documentary exhibit, which is admitted without objections as Exhibit B. The transcript (Tr.) was received on May 14, 2013.

Findings of Fact

The SOR, in general, alleged drug involvement beginning in 2005 and ending in January 2011. She admitted the factual allegations in her answer to the SOR. Her admissions are accepted and adopted and incorporated as findings of fact. In addition, the following findings of fact are supported by substantial evidence.

Applicant is a 34-year-old employee of a federal contractor. Her educational background includes a bachelor's degree. She has been continuously employed since completing college in 1999. Initially, she worked as an associate scientist for a research firm during 2000–2001. She then worked in the field of environmental compliance during 2001–2011. She began working for her current employer in 2006. She relocated, at company expense, to her state of current residence in 2008. The available documentary information shows she has a good, if not excellent, employment record.²

Applicant changed career paths in February 2011, when she began working as a senior investigator in the corporate security section of her company. It is for this position in which her company is sponsoring her for a security clearance. To that end, she submitted a security clearance application in April 2011.³

¹ This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply here. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

² Exhibits A1–A7.

³ Exhibit 1.

The record evidence shows Applicant has a history of drug abuse, which she does not dispute, as follows:

1. She used marijuana with varying frequency from November 2008 to January 2011.
2. She used marijuana regularly, on a weekly to monthly basis, from April 2005 to January 2007.
3. She bought marijuana twice during 2005–2006.
4. She used cocaine and Ecstasy during 2005–2009.
5. She used GHB two to three times during 2005.
6. She used prescription medication (painkillers) without a prescription during 2007–2010.

Applicant disclosed her history of drug abuse when she completed her April 2011 security clearance application, during a June 2011 interview conducted for her background investigation, and in response to written interrogatories in September 2012.⁴ Her responses to the interrogatories are remarkable for the level of detail she provided about her drug use. According to her answers to the interrogatories, her marijuana use was weekly to monthly during 2005–2006, weekly to monthly with some months of no use during 2006–2007, four to five times per year during 2008–2009, and two to three times per year during 2009–2011. Her use of cocaine and Ecstasy was on a limited basis; cocaine was used one to two times per year during 2007–2009; and Ecstasy was used once a year during 2005–2009. And she misused the painkillers three or four times during 2007–2010.

At the hearing, I found Applicant to be smart, articulate, and professional, and I found her testimony credible and worthy of belief. She explained that she started using illegal drugs in 2005, at the age of about 27, when she was living near the beach in another state. Her two roommates were marijuana users and this led to her use of marijuana. She used marijuana while at home or at social events, and her use of the other illegal drugs took place at parties. Her last use of an illegal drug (marijuana) was in January 2011. She decided to stop around March 2011, although she had not used any illegal substance for a few months and her usage had been sporadic before that.

Applicant explained that she has several reasons that motivate her not to use illegal drugs: (1) she does not enjoy the side effects she experiences the day after usage; (2) illegal drug use is inconsistent with an active and healthy lifestyle; (3) her boyfriend for the last three years does not use illegal drugs, and illegal drugs are not part of their social environment or relationship; (4) serving as a role model for her

⁴ Exhibits 1 and 2.

boyfriend's young daughter, with whom she has regular contact; and (5) illegal drug use is inconsistent with her career and financial goals, which currently includes providing financial support to her mother. In addition, she submitted a signed statement of intent with automatic revocation of clearance for any violation to demonstrate her intent not to abuse any drugs in the future.⁵

Law and Policies

It is well-established law that no one has a right to a security clearance.⁶ As noted by the Supreme Court in *Department of Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁷ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.⁸ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.⁹

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁰ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹¹ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹² In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹³ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹⁴

⁵ Exhibit B.

⁶ *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

⁷ 484 U.S. at 531.

⁸ Directive, ¶ 3.2.

⁹ Directive, ¶ 3.2.

¹⁰ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹¹ Directive, Enclosure 3, ¶ E3.1.14.

¹² Directive, Enclosure 3, ¶ E3.1.15.

¹³ Directive, Enclosure 3, ¶ E3.1.15.

¹⁴ *Egan*, 484 U.S. at 531.

The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.¹⁵

The AG set forth the relevant standards to consider when evaluating a person's security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense decision based upon consideration of the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

The Government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.¹⁶ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

Discussion

Under Guideline H,¹⁷ the security concern is that the use of an illegal drug, or misuse of a prescription drug, raises questions about a person's judgment, reliability, and trustworthiness. In this context, the term drug abuse means "the illegal use of a drug or use of a legal drug in a manner that deviates from the approved medical direction."¹⁸ The guideline also expresses a concern that drug involvement may call into question a person's ability or willingness to follow laws, rules, and regulations.

Here, the evidence is sufficient to establish a security concern based on Applicant's history of drug abuse.¹⁹ The evidence shows she engaged in drug abuse for several years, with her drug of choice being marijuana. Her last incident of drug abuse took place in January 2011, a few months before she applied for a security clearance. She was a late bloomer, apparently refraining from drug abuse until the age of 27, as opposed to a more common case of drug abuse in high school or college. Her drug abuse was both unlawful²⁰ and troubling, which reflects poorly on her judgment, reliability, trustworthiness, and willingness to follow laws, rules, and regulations.

¹⁵ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

¹⁶ Executive Order 10865, § 7.

¹⁷ AG ¶¶ 24–26 (setting forth the security concern and the disqualifying and mitigating conditions).

¹⁸ AG ¶ 24(b).

¹⁹ AG ¶ 25(a).

²⁰ AG ¶ 25(c).

There are four mitigating conditions to consider under Guideline H.²¹ Based on the evidence before me, the most pertinent here is AG ¶ 26(b), because Applicant has demonstrated that she does not intend to abuse any drugs in the future. I reach this conclusion for several reasons: (1) she no longer associates with drug-using associates such as those in her state of former residence; (2) her social environment, including her relationship with a longtime boyfriend, is not one where illegal drugs are used; (3) her last use of an illegal drug was more than two years ago, which is an appropriate period of abstinence; and (4) her submission of the signed statement of intent, which is certainly probative evidence. In addition, Applicant's full disclosure of her history of drug abuse speaks well for her candidness, honesty, and integrity, qualities that are relevant in holding a security clearance. Taken together, along with the other evidence in the case, these matters persuade me that her drug abuse is safely in the past and will not recur.

In conclusion, Applicant's history of drug abuse does not justify current doubts about her judgment, reliability, trustworthiness, and ability to protect classified information. In reaching this conclusion, I considered the whole-person concept.²² I also weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. Accordingly, I conclude she has met her ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline H:	For Applicant
Subparagraphs 1.a–1.f:	For Applicant

Conclusion

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Michael H. Leonard
Administrative Judge

²¹ AG ¶ 26(a)–(d).

²² AG ¶ 2(a)(1)–(9).