



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



In the matter of:)
)
) ISCR Case No. 12-02990
)
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

04/23/2014

Decision

CREAN, THOMAS M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, Applicant mitigated drug involvement and personal conduct security concerns. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on November 11, 2011, to upgrade a security clearance required for her employment with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Department of Defense (DOD) issued interrogatories to Applicant to clarify or augment potentially disqualifying information in her background. After reviewing the results of the background investigation and Applicant's responses to the interrogatories, DOD could not make the affirmative findings required to issue a security clearance. On February 3, 2014, DOD issued Applicant a Statement of Reasons (SOR) detailing security concerns for drug involvement (Guideline H) and personal conduct (Guideline E). 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) effective in the Department of Defense on September 1, 2006.

Applicant answered the SOR on March 3, 2014. She admitted the allegation of misconduct under Guideline E and the allegation of drug use under Guideline H. she denied that her conduct was now a security concern. The allegations of drug involvement and personal conduct are based on the same factual circumstances, use of marijuana from January 2006 until April 2011, with one use being while holding a security clearance. Department Counsel was prepared to proceed on March 14, 2014, and the case was assigned to me on March 18, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on March 21, 2014, scheduling a hearing for April 9, 2014. I convened the hearing as scheduled. The Government offered three exhibits, which I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 3. Applicant testified, and offered one exhibit which I marked and admitted into the record without objection as Applicant Exhibit (App. Ex.) A. DOHA received the transcript of the hearing (Tr.) on April 18, 2014.

Findings of Fact

Applicant's admissions are included in my findings of fact. After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 25 years old. She attended college from 2006 until 2010, receiving a bachelor's degree in both mathematics and economics. She started working for her defense contractor employer in June 2010 and was granted eligibility for access to secret classified information. She is single. She has been selected to attend fulltime a master's of business administration program in the fall of 2014. She has been living with her parents since January 2014. (Tr. 24-25; Gov. Ex. 1, e-QIP, dated November 11, 2011)

The SOR alleges, and Applicant admits, that she used marijuana while a high school senior and college student with varying frequency from January 2006 until May 2010. She also admits that she used one time in April 2011 while visiting a friend at a college. She used marijuana a few times while a high school senior from January to June 2006. While in college, her use of marijuana varied depending on her activities. She did not use marijuana in the summers while working as an intern. In the spring, she played varsity tennis so her use was infrequent. During the other times of the year, her use of marijuana varied from once weekly to once monthly. She spent the fall semester of her junior year abroad so she did not use marijuana. She did extremely well in college with demanding dual majors and maintained a 3.4 grade point average. She stopped her use of marijuana when she graduated from college in May 2010. (Tr. 13-16, 20-21)

Applicant was granted access to classified information in May 2010 when she started working fulltime for the defense contractor. In April 2011, she used marijuana one time while visiting a friend in college. At the time, she did not think about using marijuana while having access to classified information. To the best of her knowledge, her employer did not have a drug-testing program. (Tr. 16-18)

Applicant has been open and candid about her use of marijuana while in college. She was also open and candid about her one time use in April 2011. She now has matured and realizes that she is working in an adult world and must behave as an adult. She has continued to play tennis and is a marathon runner. She has been concentrating on her work and has performed well. Her work evaluations have been excellent. She has no security violations, and her evaluations show that she has maintained the company's core values of integrity, trust, and professionalism. Her ratings show she goes above and beyond what is required. Her friends do not use marijuana and her parents are aware of her past marijuana use. She has continually stated her intent not to use drugs in the future, even when she attends graduate school in the fall. (Tr. 18-22; App. Ex. A, Evaluations, various dates)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the Administrative Guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching adjudicative goal is a fair, impartial and common sense 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, 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 burden of persuasion to 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 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 potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline H, Drug Involvement

The use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, because it may impair judgment and raises questions about a person's ability or willingness to comply with laws, rules, and regulations. Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction. Drugs are defined as mood and behavior altering substances, including drugs material and other chemical compounds identified and listed in the Controlled Substances Act of 1970. Marijuana or cannabis is included on this list. (AG ¶ 24)

Applicant admits using marijuana with varying frequency from approximately January 2006 until April 2011. She admitted to using marijuana one time while holding a security clearance. Applicant's use of marijuana raises Drug Involvement Disqualifying Condition AG ¶ 25(a) (any drug use); and AG ¶ 25(g) (any illegal drug use after being granted a security clearance).

I considered Drug Involvement Mitigating Conditions AG ¶ 26(a) (the behavior happened so long ago, was so infrequent, or happened under such unusual 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 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; (4) a signed statement of intent with automatic revocation of clearance for any violation).

While there is no "bright line" rule for determining when conduct is recent or sufficient time has passed since the incidents, a determination whether past conduct affects an individual's present reliability and trustworthiness must be based on a careful evaluation of the totality of the evidence. If the evidence shows a significant period of time has passed without evidence of drug involvement, there must be an evaluation

whether that period of time demonstrates changed circumstances or conduct sufficient to indicate a finding of reform or rehabilitation.

These mitigating conditions apply. Applicant admits to intermittent use of marijuana as a high school and college student. After she graduated from college, she only used one time while visiting a friend at a college. She has not used illegal drugs since May 2010 except for that one time. Applicant realizes she is now an adult and must behave as an adult and not use illegal drugs. She stated her clear intent not to use illegal drugs in the future. Her present friends do not use drugs and she is presently living at home with her parents. Her major use of marijuana was over four years ago, was infrequent, and happened under circumstances that are now unlikely to recur since she is now mature and aware of her adult responsibilities. Applicant demonstrated intent not to use drugs in the future, has changed her environment from college life to professional life, and has friends who do not use drugs. There has been an appropriate period of abstinence, and a change in lifestyle and circumstance. Applicant mitigated security concerns for drug involvement.

Guideline E, Personal Conduct

The drug use allegation has also been alleged as a personal conduct security concern. Personal conduct is a security concern because conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. (AG ¶ 15) Personal conduct is always a security concern because it asks whether the person's past conduct justifies confidence the person can be trusted to properly safeguard classified information.

As noted above, Applicant has mitigated security concerns for drug involvement. As such, she also mitigated security concerns for her personal conduct since the factual bases are the same for the allegations.

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 the Applicant's conduct and all the 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered that Applicant is an excellent worker who has received superior ratings and is considered reliable, honest, and trustworthy. I considered that she has been granted access to classified information in the past.

Applicant admitted using marijuana with varying frequency while a high school senior and a college student. She has not used marijuana since graduation from college in May 2010 except for a one-time use in April 2011 while visiting a friend at a college. At the time of the one-time use, she had access to classified information. Her misuse was limited, and she has shown that her use of illegal drugs will not happen again and that she is reformed and rehabilitated. I conclude that Applicant mitigated the security concern for drug involvement and personal conduct. She established that she is reliable, trustworthy and candid. Overall, the record evidence leaves me without questions and doubts as to Applicant's judgment, reliability, and trustworthiness.

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
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 eligibility for a security clearance. Eligibility for access to classified information is granted.

THOMAS M. CREAN
Administrative Judge