



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



In the matter of:)
)
) ISCR Case No. 12-03516
)
Applicant for Security Clearance)

Appearances

For Government: Christopher Morin, Esq., Department Counsel
For Applicant: *Pro se*

12/05/2013

Decision

DUFFY, James F., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant has not mitigated the security concerns arising under Guideline H (Drug Involvement). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on November 29, 2011. On August 23, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H. This action was taken under Executive Order (EO) 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 on September 1, 2006.

On September 6, 2013, Applicant answered the SOR and requested a hearing. The case assigned to me on October 11, 2013. The Defense Office of Hearings and

Appeals (DOHA) issued a notice of hearing on October 28, 2013, and the hearing was convened as scheduled on November 20, 2013. At the hearing, the Government offered four exhibits (GEs 1–4) that were admitted into evidence without objection. Department Counsel’s index of exhibits is marked as Hearing Exhibit (HE) 1. Applicant testified, called no witnesses, and offered three exhibits (AEs A–C) that were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on December 2, 2013.

Findings of Facts

Applicant is a 49-year-old employee of a defense contractor. She began working for her current employer in 1994. At the time of the hearing, she was on long-term disability leave. She graduated from high school in 1983 and attended two years of college. She married in 1986 and divorced in 1992. She has two adult children, ages 23 and 24. She has held a security clearance since 2004.¹

The SOR alleged that Applicant used and purchased marijuana occasionally from March 1977 to November 2012 (SOR ¶¶ 1.a and 1.b), that she used marijuana after being granted a security clearance in 2004 (SOR ¶ 1.c), and that she used marijuana after completing her security clearance application in November 2011 (SOR ¶ 1.d). In her answer to the SOR, she admitted each allegation with comments. Her admissions are incorporated herein as findings of fact.²

In her answer to the SOR, Applicant stated that her use of marijuana from March 1977 to November 2012 was “minimal, casual, private and infrequent, and separated by long periods of non-use.” After smoking marijuana for the first time in 1977, she did not smoke it again until the early 1980s when she was in high school. At that time, she smoked marijuana with friends in private settings until she became pregnant with her first child in 1988. She then refrained from using marijuana until she went through a contentious divorce in the early 1990s. She discontinued using it again after her divorce and prior to her obtaining her current job in 1994. She passed a drug screening test to obtain that job.³

Prior to receiving her security clearance in 2004, Applicant was issued drug involvement interrogatories. In the Joint Personnel Adjudication System (JPAS), the adjudication summary indicated that she responded to the interrogatories by claiming she had no involvement with illegal drugs since 1994, that she had no intent to involve herself with illegal drugs in the future, and that she had changed her lifestyle due to maturity, parenthood, and job stability. Based on her interrogatory responses, she was recommended for a favorable security clearance determination.⁴

¹ Tr. 27-28, 33-34; GEs 1, 2, 4.

² SOR; Applicant’s answer to the SOR.

³ Tr. 20-22, 29-30, 32-34; Applicant’s answer to the SOR; GE 4.

⁴ Tr. 41-44, 49-50; GE 2.

After obtaining her security clearance in 2004, Applicant continued to refrain from using marijuana until her mother became disabled in about 2006. At that time, Applicant was a single mother, worked in a stressful job, received no child support, and served as her mother's primary caregiver. She then began using marijuana off-and-on, including while driving to work. When her grandson was born in September 2011, she made the decision to never use marijuana again. In November 2011, she disclosed in her e-QIP that she had occasionally used marijuana from May 1977 (an estimated date) to September 2011.⁵

After submission of her e-QIP, Applicant refrained from using marijuana until May 2012 when her mother's health condition worsened and Applicant was also involved in managing a complicated project at work. At that point, she purchased and consumed a small amount of marijuana from May 2012 to November 2012, when she suffered a cardiovascular accident (CVA) at work. This was her second CVA and more serious than the first and resulted in her admission to an intensive care unit for a week. As a result of this later CVA, she suffered speech impairment and was diagnosed with a heart condition. She had been a daily cigarette smoker since about 1997, but after her latest CVA, she indicated that she stopped smoking cigarettes and marijuana. She said that she cannot smoke in the future because she believes it will kill her. She has received treatment from a neurologist who has assisted her in changing her behavior and in coping with stress. Her new stress reduction techniques include mediation, breathing, and exercising. Additionally, her mother passed away shortly after her latest CVA.⁶

Applicant acknowledged that she understands that she broke the law by using marijuana, but indicated that it was not flagrant and was a method of stress relief. She stated, with the one exception, that she no longer associates with anyone who uses marijuana and avoids the places where marijuana is used. Her friend who continues to use marijuana does not do so in her presence. She testified that she does not intend to use marijuana again.⁷

Applicant submitted letters of reference from friends and coworkers who attest to her honorable character. These individuals have known her for many years. In general, they describe her as honest, hard-working, and loyal. She also presented her performance excellence plan, which included her goals, objectives, and appraisal. Her appraisal reflected that she always exceeds expectations.⁸

⁵ Tr. 21-22, 28-29, 33-35, 37, 39-40; Applicant's answer to the SOR; GEs 1, 4.

⁶ Tr. 20-21, 23-25, 29, 31-32, 36-39; Applicant's answer to the SOR.

⁷ Tr. 20-21, 24-25, 35, 39; Applicant's answer to the SOR.

⁸ AEs A-C.

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 that are to be 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, administrative judges apply the guidelines 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, 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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* Executive Order 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.

The guideline lists several conditions that could raise disqualifying security concerns under AG ¶ 25. Three are potentially applicable in this case:

(a) any drug abuse;

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

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

Applicant purchased and used marijuana on an occasional basis from March 1977 to November 2012. She used marijuana after being granted a security clearance in 2004 and after completing her security clearance application in 2011. AG ¶¶ 25(a), 25(c), and 25(g) apply in this case.

SOR ¶ 1.d alleges conduct already covered by SOR ¶¶ 1.a and 1.c. I find in favor of Applicant on SOR ¶ 1.d.

Two mitigating conditions for drug involvement under AG ¶ 26 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; (4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant purchased and used marijuana with varying frequency over a period of 35 years. She last used it about a year ago when she was 48 years old. She knew her use of marijuana created security concerns. Such longstanding and recent use of marijuana casts doubt on her reliability, trustworthiness, and good judgment.

In 2012, Applicant suffered a CVA that resulted in impairment of her speech and diagnosis of a heart condition. Due to these medical conditions, she decided to stop smoking cigarettes and marijuana. While these medical conditions are life-altering events, it is still too soon to conclude that Applicant will not use marijuana in the future. In the past, she has decided to stop using marijuana, but failed to do so permanently. She initially decided to stop using marijuana when she had her first child in 1988 and continued to refrain from doing so until she underwent a stressful divorce in the early 1990s. She again stopped using marijuana in about 1994. In responding to interrogatories in 2004, she advised the Federal Government that she did not intend to use marijuana in the future. However, she started using marijuana again in 2006 when she experienced significant stress. She then decided to stop using marijuana when her grandson was born in 2011, but used marijuana again from May to November 2012 when she was encountering family and work stress. Applicant's current claim that she will not use marijuana in the future must be evaluated from the viewpoint that she has made such claims in the past but failed thereafter to stop such use.

Applicant's history of marijuana use reflects a disregard of the law and security concerns. From a review of the entire record evidence, I find that a sufficient period of abstinence has not passed to conclude that Applicant's illegal drug involvement will not recur. AG ¶¶ 26(a) and 26(b) partially apply, but do not mitigate the security concerns arising in this case.

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 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.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline H in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant has worked for her current employer for almost 20 years. She is a valued employee. Her friends and coworkers attest to her honorable character. She has been honest about her use of marijuana on her e-QIP, in her security clearance interview, and at the hearing. Nonetheless, she used marijuana while holding a security clearance and after submitting her most recent e-QIP. She used marijuana even though she knew it was unlawful and created security concerns. For the reasons stated above, I find that insufficient time has expired to conclude that her use of marijuana is behind her.

Overall, the record evidence leaves me with questions and doubts about her eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the drug involvement security concerns.

Formal Findings

Formal findings 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:	AGAINST APPLICANT
Subparagraphs 1.a – 1.c:	Against Applicant
Subparagraph 1.d:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

James F. Duffy
Administrative Judge