



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



In the matter of:)
)
) ISCR Case No. 12-03853
)
)
Applicant for Security Clearance)

Appearances

For Government: Julie Mendez, Esq., Department Counsel
For Applicant: Kenneth P. Niman, Esq.

02/04/2015

Decision

MASON, Paul J., Administrative Judge:

Applicant exercised poor judgment in 2007 and 2009 when she used illegal drugs while possessing a security clearance. However, based on the isolated nature of the drug use, coupled with the passage of time and her favorable character evidence, the security concerns raised under the personal conduct guideline are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

Applicant completed and signed her Electronic Questionnaire for Investigations Processing (e-QIP), Government's Exhibit (GE) 1, on November 1, 2011. On August 27, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under personal conduct (Guideline E). The action was taken pursuant

to 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) implemented by the Department of Defense on September 1, 2006.

Applicant provided a notarized response to the SOR on September 16, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 9, 2014, for a hearing on December 17, 2014. The hearing was held as scheduled. The Government's Exhibits (GE) 1 and 2, and Applicant's Exhibits (AE) A through C were admitted into evidence without objection. On December 24, 2014, Department counsel advised that she had no objection to Applicant's post-hearing submission (notarized statement of intent with automatic revocation). The document was marked and admitted in evidence as AE D. The case closed when the transcript was received on January 5, 2015.

Findings of Fact

The SOR alleges under the personal conduct guideline that Applicant used marijuana on two occasions in 2007 and 2009 after being granted a security clearance in 2005. In her answer, Applicant admitted the two incidents occurred at beach parties, but indicated that she no longer associates with those drug using individuals. She pointed out that the two events were isolated and occurred more than five years ago. She averred that her decision to self-report the marijuana use demonstrates her honesty.

Applicant is 40 years old. She has been married for ten years and has two children, ages nine and seven. In 1996, she received a bachelor of arts degree in visual communication and bachelor of science degree in post-traumatic psychology. In 1999, she was awarded a master's degree in clinical psychology. Since 2001, she has been employed in several positions by her employer, a defense contractor. She is currently director of user experience in her employer's technical capability center. She seeks a continuation of a top secret security clearance.

The joint adjudication management system (JAMS) person summary indicates that Applicant was granted a security clearance in October 2005. The clearance was active in July 2007. The clearance was reinvestigated between March 2011 and November 3, 2012. The JAMS summary reflects that a recommendation for approval of Applicant's security clearance was made under the drug involvement guideline because the "drug involvement was not recent and subject was not employed in a sensitive position during this period. Subject states no intent for further use." (GE 2)

In response to section 23 of her November 1, 2011 e-QIP, requiring information about illegal drug use or drug activity, Applicant indicated she had used marijuana "1-2 times in the past seven years," with the use occurring in 2007 and 2009. In response to the nature and frequency of use, Applicant responded "extremely rarely and not for a while." In response to the question of whether her use of drugs occurred while possessing a clearance, Applicant checked "no." She indicated that she did not intend to use marijuana or controlled substance in the future because she had no interest in it. She answered "no" to the remainder of the drug and controlled substance questions of Section 23. In response to Section 25 requiring information about security clearance investigations and clearance record, Applicant indicated stated that her top secret was granted in October 2005. (GE 1 at 23-26)

At the hearing, Applicant recalled her initial security clearance investigation in 2004 that ended with her being granted a top secret clearance in late 2005. During the investigation, she noted on her e-QIP and in her interview that she used marijuana on two occasions while in graduate school (circa 1997 to 1999). The drug was handed to her. She did not know the source of the drugs. She stated that between 2005 and 2011, she did not work on any classified projects. During that period, she worked mostly for another federal government agency (AGA) where a security clearance was not required. (Tr. 17-20)

Applicant testified that in late 2011, she began supporting a cleared project and testified that she had to renew her inactive clearance. In her e-QIP, she truthfully reported that she had used drugs twice in past seven years, in 2007 and 2009. During the follow-up interview, she explained to the interviewer that she used marijuana two times at beach parties with individuals she did not know well. After inhaling one or two times, she went home and fell asleep. She did not realize the impact of her marijuana use on her security clearance or her support on federal contracts not requiring a security clearance. Currently, Applicant's regular social contacts do not include individuals who use illegal drugs, and she tries to avoid situations where drugs are used. She has used no illegal drugs since her use in 2009 because she takes her security clearance and her job seriously. She has walked away from all offers to use marijuana. She does not intend to use illegal drugs in the future. She does not want to do anything that places her honesty and integrity at risk. She recognizes the bad judgment she demonstrated in using the marijuana and signed a statement of intention to abstain in the future with automatic revocation of any clearance for a violation. (GE 1; Tr. 20-24, 27-30, 34-37; AE D)

The cleared project that Applicant began to support in late 2011 was a criminal apprehension program administered by a federal law enforcement agency. Applicant's support was focused on making the program easier to use by agency officials and local law enforcement. Applicant is still contributing to a second FBI project to streamline command post operations in civil unrest situations. (Tr. 25-26)

Applicant has never had any disciplinary problems at work. She has received two performance awards in the last two years. She received an award in 2012 for her support of clients and internal employees. In 2013, she was the first recipient of a new award that officially recognized her as an employee who excels at nurturing integration and collaboration of various sectors of her employer's workforce (through web design and development) so that employees find information that consistently elevates their job performance. Applicant's performance evaluations for 2011, 2012, 2013, and 2014, have frequently included ratings of "exceeded expectations." (AE A, B, C; Tr. 20, 31-34)

Character Evidence

Witness A is presently employed by a consulting company and has her own business. She met Applicant in 2006 while she was one of the project managers at Applicant's company. She supervised Applicant on a project that Applicant was supporting. She supervised or worked with Applicant on several projects until witness A was laid off in 2013. Witness A praised Applicant's honesty, trustworthiness, and ethical behavior that Applicant exhibited in working with the customers of the company. Witness A and Applicant meet on a regular basis for dinner. The two families have had brunch at Applicant's home. Applicant provided reliable parenting experience when witness A's children were young. Applicant is highly regarded at work. Witness A has never observed Applicant use illegal drugs. (Tr. 40-47)

Witness B has been a personal trainer for the last two and one-half years. Before her current employment, she was vice president of operations for a counterintelligence company. She met Applicant eight and one-half years ago at a daycare center where their children were enrolled. The families of witness B and Applicant have dinner frequently at various locations in the community. Sometimes, they may coordinate group dinners for the daycare mothers or meet each other for coffee. Witness B values Applicant's reputation for truthfulness. Applicant's trustworthiness is based on the responsible manner in which she babysits witness B's children. Before Applicant asked her to appear as a witness, witness B did not know Applicant had ever used illegal drugs. (GE 1 at 12; Tr. 48-53)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. Each guideline lists potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

The disqualifying and mitigating conditions should also be evaluated in the context of nine general factors of the whole-person concept so that all available information, past and present, favorable and unfavorable, is a part of the decision for or against an applicant's

security clearance application. Such decisions entail a certain degree of legally permissible extrapolation as to the potential, rather than actual, risk of compromise of classified information.

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 ultimate burden of persuasion of establishing that it is clearly consistent with the national interest to grant him a security clearance.

Analysis

Personal Conduct

The security concern for personal conduct is set forth in AG ¶ 15:

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.

The potentially pertinent disqualifying conditions under AG ¶ 16 are:

(c) credible adverse information in several adjudicative areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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 he may not properly safeguard classified information; and

(e) personal conduct, or concealment of information about one's conduct, that creates vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known may affect the person's personal, professional, or community standing

After being granted a security clearance in October 2005, Applicant smoked marijuana at two beach parties in 2007 and 2009. When she submitted her e-QIP in November 2011, she revealed the use, but denied she used illegal drugs while holding a security clearance because she was not working on any contracts requiring a security

clearance. However, she was still working on federal contracts between 2005 and 2011. Her testimony demonstrates that she did not take her security clearance into consideration when she used marijuana. Though Applicant's drug use is not sufficient to support an adverse determination in other adjudicative areas under the drug involvement and criminal conduct guidelines, evaluation of all the evidence under the whole-person concept supports an assessment of poor judgment and unwillingness to comply with rules and regulations. AG ¶ 16(c) applies.

The mitigating conditions under AG ¶ 17 that are potentially pertinent are:

(c) the offense was 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;

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

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

Applicant's illegal marijuana use in 2007 and 2009 was "minor." She was at the beach on both occasions with individuals she did not know very well. The marijuana was given to her on each occasion. Applicant no longer associates with the individuals and tries to avoid situations where illegal drugs may be used. Though the circumstances of Applicant's use do not appear to be unusual, I do not believe she will commit this kind of poor judgment in the future. Two reasons are her honesty and her signed statement confirming her intention not to use illegal drugs in the future. AG ¶ 17(a) applies.

Applicant's self-disclosure of her drug use on her November 2011 e-QIP is considered mitigating under AG ¶ 17(c), even though she denied using the drugs while holding a security clearance. Her admission in her answer to the SOR and at the hearing that she used illegal drugs while holding security clearance, demonstrates that she realizes her poor judgment and has been taking proactive steps to avoid situations where illegal drug activity may be taking place. AG ¶ 17(d) applies in part.

Applicant's self-disclosures of her illegal drug use to the Government during her security investigations in her 2005 (regarding her isolated marijuana use during graduate school) and 2011 e-QIPs, represent positive steps of substantially reducing a critical source

of vulnerability. Her revelation about her drug use to witness A and B decrease her vulnerability risks even more. AG ¶ 17(e) applies.

Whole-Person Concept

I have examined the evidence under the disqualifying and mitigating conditions of personal conduct. I have also weighed this case in the context of nine factors of the whole-person concept. These factors are set forth in 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 the participation was 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 a commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant demonstrated poor judgment when she used marijuana in 2007 and 2009 while holding a security clearance. She cannot blame immaturity for her use in 2007 because she was 33 years old with a family at the time. She was 35 years in 2009 when she again used the drug. She cannot blame her drug use on her belief her security clearance was inactive because illegal drug use is against federal law. Applicant did not think about the impact that her drug use would have on her security clearance or her work on unclassified federal contracts.

After weighing and balancing all the evidence as a whole, I conclude that the mitigating evidence supports Applicant's eligibility of security clearance access. She is 40 years old. She has been married for 10 years and has two children. She has been employed by a defense contractor since December 2001. She has compiled an impressive job performance record for the last four years. The two awards she received in 2012 and 2013 indicates that she is well-respected by her peers. Witness A admired Applicant's trustworthiness during their six-year working relationship. Witness B extolled her honesty and trustworthiness. In view of the isolated scope of Applicant's drug use in 2007 and 2009, coupled with evidence of her honesty and trustworthiness, Applicant has successfully overcome the security concerns raised under the personal conduct guideline.

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 (Personal Conduct): FOR APPLICANT

Subparagraph 1.a: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Paul J. Mason
Administrative Judge