



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



In the matter of:)
)
) ISCR Case No. 14-05235
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrew Henderson, Esq., Department Counsel
For Applicant: *Pro se*

February 13, 2017

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On February 21, 2014, Applicant submitted an electronic Questionnaires for Investigations Processing (e-QIP). On February 13, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H, Drug Involvement, and Guideline E, Personal Conduct. The 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) effective after September 1, 2006.

Applicant responded to the SOR (Answer) on March 4, 2015, and requested a hearing before an administrative judge. The case was assigned to me on June 20, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 5, 2016, and the hearing was convened as scheduled on July 26, 2016. The Government offered Government Exhibits (GXs) 1 through 3, which were admitted

without objection. Applicant offered two exhibits, marked Applicant Exhibits (AppXs) A and B. Department Counsel had no objections, and they were admitted. Applicant testified on her own behalf. DOHA received the hearing transcript (Tr.) on August 3, 2016.

Findings of Fact

Guideline H – Drug Involvement & Guideline E – Personal Conduct

Applicant is a 39-year-old “sales Representative.” (GX 1 at pages 5 and 12.) In 2008, her six-day-old son passed away. (TR at page 23 lines 3~18.) That, coupled with “a non-supportive husband,” caused her to seek medical treatment. “The doctor gave . . . [her] Xanax” to help . . . [her] sleep and eat.” (TR at page 24 lines 3~16.) Applicant describes her physical and mental state in the following terms: “I had just been given an emergency C-Section and I was losing weight and I wasn’t sleeping and I was sick. And the Xanax made me worse. It gave me nightmares. It made me jittery. It made me more irritable.” (*Id.*) She then took the advice of “a former family member,” who suggested that she might “smoke some marijuana” to treat her maladies. (TR at page 24 lines 3~16, and at page 24 line 25 to page 25 line 4.)

1.a. Applicant used marijuana with varying frequency from 2008 until about July of 2010. As her physical condition improved, she decided to stop using the drug. (TR at page 29 line 22 to page 30 line 9.)

1.b. and 1.d. In August of 2010, Applicant tested positive for marijuana. She was confident that she would pass a urinalysis; but not a hair sample test, as the residual marijuana remains in one’s hair months after last usage. (TR at page 30 line 20 to page 31 line 7.) Indeed, Applicant tested positive again as the result of a hair sample test, which resulted in her losing her job. (TR at page 29 lines 2~21, and at page 30 line 20 to page 32 line 6.)

1.c. In November of 2010, Applicant volunteered for “Substance Abuse Treatment.” (TR at page 26 line 24 to page 28 line 22, and AppX B at page 2.) During this treatment, “It was determined that . . . [Applicant] had a Low Probability of having a Substance Use Disorder.” (AppX B at page 2.) Her “Substance Abuse Professional” averred, in part, the following:

[Applicant] . . . began treatment on November 13, 2010 and completed on January 20, 2011. [Applicant] . . . was cooperative and compliant with all treatment objectives, voluntarily attended several AA/NA meetings and paid all required fees to this agency. Prior to her discharge she tested negative for any substances.

[Applicant] . . . demonstrated the insights and understandings regarding her violations and lifestyle. The undersigned counselor believes that she has made a substantial change to her perception and behavior and that her SUDs violations are unlikely to reoccur. (AppX B at page 2.)

Applicant has also signed a statement of intent with automatic revocation of clearance for any violation. (AppX B at page 1.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), which 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, "[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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

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.

I have considered all of the evidence in this case and the disqualifying conditions under Drug Involvement AG ¶ 25, and the following are potentially applicable:

- (a) any drug abuse; and
- (b) testing positive for illegal drug use.

The Government presented sufficient information to support the factual allegations under SOR ¶ 1.a. Applicant used marijuana from 2008~2010.

I have considered all of the evidence in this case and the mitigating conditions under Drug Involvement AG ¶ 26, and the following 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;
- (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; and
- (d) satisfactory completion of a prescribed drug treatment program . . . without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Applicant has not used any illegal substance for more than six years, eschews any future usage, and has successfully completed a treatment program. She has established mitigation under AG ¶¶ 26(a), 26(d), and 26(d).

Guideline E, Personal Conduct

The security concern for the Personal Conduct guideline is set out 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(d) credible adverse information that is not explicitly covered under any other guideline . . . (3) a pattern of dishonesty or rule violations.

AG ¶ 17 provides conditions that could mitigate security concerns. The following is potentially applicable:

(c) . . . so much time has passed, . . . or it happened under such unique circumstances that it is unlikely to recur and does not cast a doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant's conduct was an attempt at self-medication after the tragic loss of her infant. She has successfully completed drug counseling. It is highly unlikely that this distant lack of judgment will occur again in the future.

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 pertinent facts and circumstances surrounding this case. Applicant is highly respected in the workplace, as evidenced by six letters of support, and by a plethora of awards. (AppX at pages 3~44.)

Overall, the record evidence leaves me without serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Drug Involvement and Personal Conduct security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	FOR APPLICANT
Subparagraph 1.a.:	For Applicant
Subparagraph 1.b.:	For Applicant
Subparagraph 1.c.:	For Applicant
Subparagraph 1.b.:	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.

Richard A. Cefola
Administrative Judge