



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)
)

ISCR Case No. 15-01668

Appearances

For Government: Andrew H. Henderson, Esquire
Department Counsel

For Applicant: Stephanie Mendez, Esquire

March 13, 2017

Decision

ROSS, Wilford H., Administrative Judge:

Applicant used marijuana approximately ten to twenty times between 2006 and 2009, while holding a security clearance. In 2012, she unintentionally submitted false information on a Government questionnaire about her marijuana use. Since that time she has been truthful with the Government, and her life and career show successful mitigation. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted her most recent Electronic Questionnaire for Investigations Processing (e-QIP) on June 28, 2012. (Government Exhibit 1.) On December 18, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines

H (Drug Involvement) and E (Personal Conduct). 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 for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (Answer) on January 24, 2016, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on March 28, 2016. The case was assigned to me on April 4, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on May 4, 2016. I convened the hearing as scheduled on June 29, 2016. The Government offered Government Exhibits 1 and 2, which were admitted without objection. Applicant offered Applicant Exhibits A through K, which were admitted without objection, and testified on her own behalf. Two additional witnesses testified on Applicant's behalf. I granted Applicant's request to leave the record open until July 15, 2016, to permit her to submit additional evidence. On July 12, 2016, she submitted Applicant Exhibit L, to which Department Counsel had no objection. The exhibit was admitted into the record, which closed as scheduled. DOHA received the transcript of the hearing (Tr.) on July 8, 2016.

Findings of Fact

Applicant is a 42-year-old employee of a defense contractor. She has a bachelor's degree. Applicant is divorced with two children. She is employed as a deputy program manager, and is seeking to retain a security clearance previously granted in connection that employment. She received a security clearance in approximately 2001.

Paragraph 1 (Guideline H – Drug Involvement)

The Government alleges in this paragraph that Applicant is ineligible for clearance because she has used illegal drugs. Applicant admitted the single allegation under this paragraph.

Applicant was married from 2000 to 2011. Her husband was a chronic user of medical marijuana, to the point it had a serious impact on his physical health. Applicant, in what she acknowledges was a foolish attempt to save her marriage, which was in chaos, used marijuana with him on several occasions between 2006 and 2009. She was unable to give an exact figure, but stated it was probably about ten times, and no more than twenty. She held a security clearance during this entire period. Applicant's husband refused to give up drug use and, in 2010, she made the difficult decision to divorce him. Applicant has minimal contact with him, and only in the context of his court-ordered visitation with their children. (Tr. 31-47, 52-57, 62-64; Government Exhibit 1 at Section 23, Exhibit 2 at 3; Applicant Exhibit F.)

Applicant has not used marijuana since 2009, and evinced a credible intent not to do so in the future. She is adamantly opposed to drug use, and particularly to the use of medical marijuana. Applicant credibly testified that marijuana no longer has any part in her life, and that she deeply regrets her past use. In addition to other documentary evidence, she submitted a signed statement of intent not to use illegal drugs in the future. She agreed that such use could result in automatic revocation of her security clearance. (Tr. 47-49, 61; Government Exhibit 1 at Section 23; Applicant Exhibits J, K, and L.)

Paragraph 2 (Guideline E – Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because she has engaged in conduct that shows poor judgment, untrustworthiness or unreliability. Applicant denied subparagraph 2.a under this paragraph. She admitted subparagraph 2.b, which alleged that her drug use described under Paragraph 1, above, was cognizable under this guideline as well.

Applicant filled out an e-QIP on June 28, 2012. (Government Exhibit 1.) Section 23 of the questionnaire asks Applicant about her drug use history. She admitted using marijuana with her ex-husband stating that he had a “[p]rescription for medical marijuana, and I smoked a bit with him on several occasions.” She further stated, “Nature of use was in my home with my husband, use was infrequent. In June 2009, we smoked marijuana together before going to a concert.” Applicant also stated that the month and year of first use, and the month and year of last use, was June 2009. This was incorrect, as Applicant first used marijuana in 2006.

Applicant was questioned by an investigator from the Office of Personnel Management on October 18, 2012, four months later. At that point she corrected the date of first use, stating that she had actually used marijuana for two to three years before 2009. This would correspond with first use being in 2006. Applicant testified that the incorrect answer on the questionnaire was not a deliberate omission, stating, “I think I just made a mistake in the - - in the entry of the information.” (Tr. 50-52, 62-68; Government Exhibit 2 at 3.)

Mitigation

Two co-workers testified on Applicant’s behalf. The first one has worked with Applicant since 2005, both as a subordinate and peer. The witness has knowledge of the allegations in the SOR. She finds Applicant to be a caring and trustworthy person, worthy of a security clearance. (Tr. 10-20.)

The second witness has also worked with Applicant as a subordinate and peer. She has known Applicant since 2011. This witness also has knowledge of the allegations in the SOR. The witness finds Applicant to be honest, responsible and trustworthy. (Tr. 20-26.)

Applicant submitted evidence showing that she is a highly respected and successful person and employee. She has a demanding job with her employer, being a supervisor of over 40 people and in charge of a multi-million dollar budget. She submitted evaluations from 2002 through 2015 showing that she is consistently recognized as a top performer. (Tr. 58-60; Applicant Exhibit G.)

Letters of recommendation were submitted for Applicant from people who know her personally and professionally. All of her co-workers, including her current supervisor, recommend her for a position of trust, and also indicated their understanding of security clearance requirements. (Applicant Exhibits A, B, C, D, E, H, and I.)

Policies

Security clearance decisions are not made in a vacuum. 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "Any 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, "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7

of Executive Order 10865 provides: “Any 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

Paragraph 1 (Guideline H – Drug Involvement)

The security concern relating to Drug Involvement is set forth in AG ¶ 24:

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 examined the disqualifying conditions under AG ¶ 25 and especially considered the following:

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

The following mitigating conditions under AG ¶ 26 apply to the facts of this case:

- (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's very minor marijuana use was in the distant past and related to her tumultuous and chaotic marriage to a habitual drug abuser. Her use ended in 2009, and she divorced her ex-husband in 2011. She has very limited contact with him, and that is only in relation to his court-ordered visitation rights with their children. Applicant submitted a signed statement of intent, and her testimony and written statements show that she is adamantly against drug use of any type. She has successfully mitigated the security significance of her drug use. Paragraph 1 is found for Applicant.

Paragraph 2 (Guideline E – Personal Conduct)

The security concern relating to Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty or unwillingness to comply with rules or 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.

I have examined the disqualifying conditions under AG ¶ 16 and especially considered the following:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(e) personal conduct, or concealment of information about one's conduct, that creates a 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. . .

The following mitigating conditions under AG ¶ 17 apply to the facts of this case:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(c) the offense is 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; and

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

Turning first to the alleged falsification. On its face it appears that Applicant made a false statement on the questionnaire by stating that she started and stopped using marijuana in the same month. However, her answers to other parts of the same question indicate that Applicant was talking about a period of time involving more than a month of using marijuana. Add to that the fact that four months later, when she was shown the questionnaire by an investigator, she immediately corrected the mistake. AG ¶¶ 17(a) and 17(c) apply.

Her seven years of abstinence, along with Applicant's conduct and testimony, show a credible intent not to use marijuana, or any other drugs, in the future. Applicant's conduct since 2009 has been exemplary. Rehabilitation from her conduct when married to a habitual drug abuser has been shown by years of hard work without any recurrence of drug use. AG ¶¶ 17(b) and 17(c) apply. Paragraph 2 is found for Applicant.

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 has mitigated her occasional marijuana use that ended at least seven years ago, and did not intentionally

falsify a questionnaire. She is a law abiding, trustworthy, and responsible person and employee. Overall, the record evidence does not create doubt as to Applicant's present eligibility and suitability for a security clearance.

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
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a and 2.b:	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge