



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



In the matter of:)
)
) ISCR Case No. 15-01711
)
Applicant for Security Clearance)

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: *Pro se*

03/01/2017

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department's intent to revoke her eligibility for a security clearance to work in the defense industry. Applicant mitigated the drug involvement, criminal conduct, and personal conduct concerns arising from incidents that took place when she was in an abusive relationship in 2013. She also mitigated the personal conduct concerns raised by her inadvertent omission of one-time drug use on her most recent security clearance application. Clearance is granted.

Statement of the Case

On September 11, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the drug involvement, criminal conduct, and personal conduct guidelines.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue Applicant's security

¹ This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

clearance and recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's security clearance.

Applicant timely answered the SOR and requested a hearing.² On April 4, 2016, I issued a pre-hearing order to the parties regarding the exchange and submission of discovery, the filing of motions, and the disclosure of witnesses. The parties complied and submitted documents by the April 15, 2016 deadline. At the hearing, which proceeded as scheduled on April 28, 2016, I admitted Government's Exhibit (GE) 1 through 4, Applicant's Exhibit (AE) A through F, and Hearing Exhibits I – II, without objection. I left the record open after the hearing to allow Applicant to submit additional documentation. She timely submitted AE G, which was also admitted without objection. The Defense Office of Hearing and Appeals (DOHA) received the transcript (Tr.) on May 10, 2016.

Findings of Fact

Applicant, 28, has worked for a federal contractor since May 2007. Over the years, Applicant has been promoted several times. She received her most recent promotion in early 2016. Applicant was initially granted a security clearance in approximately 2007, and completed her most recent security clearance application in January 2014. She disclosed a pending domestic violence simple assault charge. During her investigation, she also disclosed one-time heroin use in the fall of 2013. These issues formed the basis of the concerns alleged in the SOR.³

All of the alleged incidents occurred when Applicant was involved in a relationship between April and November 2013. When the relationship began, Applicant did not know that her boyfriend was an opioid addict and an alcoholic. Applicant, who does not have a history of or experience with substance abuse, believed that his addiction was psychological, not physiological and that it could be conquered if he dealt with his suppressed emotional issues. Applicant believed she could prove this point by using heroin one time to show him that it was not addictive. Focused on the welfare of her boyfriend, Applicant did not consider the consequences of illegal drug use while holding a security clearance. Although she describes her motives as being altruistic and pure, she acknowledges that her choice to use an illegal drug for any reason was not a wise one.⁴

By July 2013, Applicant's boyfriend began abusing her, first verbally, then physically. Applicant believes that, at times, she provoked her boyfriend by nagging him. In November 2013, Applicant's boyfriend was visiting her home. He began drinking. As he became increasingly intoxicated, he started taunting and threatening her. In an

² The pre-hearing order issued to the parties and the Government's discovery letter, dated October 15, 2014, are appended to the record as Hearing Exhibits (HE) I and II, respectively.

³ GE 1.

⁴ Tr. 22-25, 41-42.

attempt to stop the barrage of insults, Applicant swatted him over the blanket he was lying under, with a light-weight, flimsy wireless keyboard. He destroyed the keyboard and beat her. Applicant managed to escape to her neighbor's house. A couple of days later, she decided to file a police report. Applicant did not want her boyfriend to get in trouble; she only wanted to document the attack. She also hoped that he would be forced to get help. After taking Applicant's report and talking to her boyfriend, the police determined that Applicant was the primary aggressor because she admitted to striking the first blow with the wireless keyboard. The police charged Applicant with simple assault and executed a warrant for her arrest. It does not appear that Applicant's boyfriend suffered any legal consequences for his actions.⁵

Around the time that Applicant was dealing with her impending court proceedings, she was required to complete a new security clearance application. Applicant disclosed the pending charge, but did not disclose her one-time drug use. However, she voluntarily reported the drug use during her subject interview. At hearing, Applicant explained that she did not intentionally omit the drug use from her security clearance application; she was so preoccupied with resolving her legal problems that it did not come to mind. Having no prior interaction with the criminal justice system, Applicant was overwhelmed and focused all of her energy on dealing with the resolution of her legal issues. Eventually, Applicant pleaded no contest to the assault charge and was ordered to attend anger management counseling and to complete community service. She satisfied all of the terms of her sentence.⁶

Applicant has gone to counseling off and on throughout her life. Since December 2014, she has received counseling from a licensed clinical mental health counselor (LCMHC). At first, she attended sessions twice per week, but has progressed enough to reduce her sessions to once per week. According to Applicant's counselor, she is learning how to manage her attention deficit disorder, anxiety, and panic attacks. She has also learned how to set and hold good boundaries in her personal relationships. Applicant's counselor believes that these efforts have improved Applicant's self-esteem, which allows her to make better relationship choices. At hearing, Applicant testified that she is taking a break from relationships to learn how to become more comfortable with being alone. As a result, Applicant believes that she is in a better place and will avoid bad relationships in the future.⁷

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 and mitigating conditions, which are used in evaluating an Applicant's eligibility for access to classified information.

⁵ Tr. 25-31; GE 3-4.

⁶ Tr. 32-35, 42-44; GE 1; AE A.

⁷Tr. 32-33, 35-39; GE G.

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.” 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 to obtain 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

The SOR alleges that Applicant engaged in disqualifying conduct under the drug involvement and criminal conduct guidelines. Applicant admits to using an illegal drug use while holding a clearance and to pleading no contest to a simple assault charge. These incidents are disqualifying under AG ¶¶ 25(a) and (g) and 31(a), respectively. Her actions raise concerns about her ability or willingness to comply with laws, rules, and regulations.

Both instances of misconduct occurred while Applicant was involved in an abusive relationship with a drug addict and alcoholic. While Applicant’s one-time drug use shows extremely poor judgment, it was an aberration. Her desire to help her boyfriend, while sincere, was misguided and based on an ill-informed understanding of substance abuse and addiction. By ending the relationship and seeking counseling, Applicant has demonstrated intent not to use illegal drugs in the future. The criminal conduct is also mitigated as an isolated event. Applicant does not have a history of illegal drug use or criminal behavior. Given the changes in circumstances, it is unlikely similar misconduct will recur. Accordingly, the drug involvement and criminal conduct concerns are mitigated under AG ¶¶ 26(a) and (b) and 32 (a) and (d).

The SOR alleges, under the personal conduct guideline, that Applicant intentionally failed to disclose her illegal drug use while holding a security clearance on her January 2014 security clearance application. This omission raises concerns about

Applicant's trustworthiness and reliability. Applicant denies the falsification allegation. A statement is false when it is made deliberately (knowingly and willfully). An omission of relevant and material information is not deliberate if the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, or genuinely thought the information did not need to be reported. The evidence supports a finding that Applicant's omission was not intentional. She credibly testified about her state of mind at the time she completed her security clearance application. She was reasonably anxiety ridden and distracted. Also, the record contains several examples of Applicant's ability to self-report adverse information as well as her tendency toward honesty. In filing a police report about the November 2013 assault by her boyfriend, Applicant reported actions that ultimately led to her being charged with a crime. In her subject interview, Applicant voluntarily disclosed her one-time drug use while holding a security clearance, an action that would have otherwise remained unknown to the Government.

The SOR also alleges Applicant's one-time drug use and her criminal misconduct under the personal conduct guideline. These incidents show poor judgment and raise concerns about Applicant's ability to follow rules and regulations and are enough to support a negative whole-person assessment that Applicant may not properly handle or safeguard classified information under AG ¶ 16(c). However, as discussed above, Applicant has mitigated the underlying concerns. Applicant was involved in a romantic relationship that caused her to exercise poor judgment and temporarily lose track of her duties and responsibilities as a clearance holder. However, she recognized this and sought counseling so that she may make better choices in her personal life. Based on the statements of her counselor and my observation of Applicant at hearing, I am confident that she has done so and is able to choose healthier relationships, avoiding those that could cause her to engage in similar conduct in the future. Accordingly, AG ¶¶ 17(a), (d), and (g) apply.

Having found the concerns in the SOR mitigated, I have also evaluated Applicant's ongoing security worthiness under the whole-person factors at AG ¶ 2(a). Applicant has held a security clearance since at least 2007, without incident. Applicant's misconduct was limited to a nine-month period between April 2013 and January 2014. Because of the efforts she has taken toward rehabilitation, her misconduct during that brief period does not cast doubt on her current or ongoing security worthiness.

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, Drug Involvement:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Criminal Conduct:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Personal Conduct	FOR APPLICANT
Subparagraphs 3.a - 3.c:	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. Clearance is granted.

Nichole L. Noel
Administrative Judge