



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



In the matter of:)
)
) ISCR Case No. 15-07983
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

March 8, 2017

Decision

MOGUL, Martin H., Administrative Judge:

On April 13, 2016, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline H for Applicant. 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 (AG), effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant replied to the SOR (RSOR) in writing on May 9, 2016, and she requested that her case be decided after a hearing before an Administrative Judge. I received the case assignment on June 13, 2016. DOHA issued a notice of hearing on June 16, 2016, for the hearing to be held on July 21, 2016, and I convened the hearing on that date. The Government offered Exhibit 1, which was received without objection. Applicant testified on her own behalf, and submitted Exhibit A, which was also admitted without objection. The record was kept open until August 5, 2016, to allow Applicant to submit additional evidence. Additional documents that were timely received, have been identified and entered into evidence without objection as Exhibits B, C, D, and E.

DOHA received the transcript of the hearing (Tr) on July 28, 2016. Based upon a review of the pleadings, exhibits, and the testimony of Applicant, eligibility for access to classified information is granted.

Findings of Fact

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the following additional findings of fact:

Applicant is 37 years old. She is married, and she has no children. Applicant received a Bachelor's degree in Journalism in 2002. She has been employed by her present employer, a defense contractor, since April 2015, and she seeks a DoD security clearance in connection with her employment in the defense sector.

Guideline H - Drug Involvement

The SOR lists four allegations (1.a., 1.b., 1.c., and 1.d.) under Adjudicative Guideline H.

1.a. The SOR alleges, and Applicant admitted in her RSOR, that she, "used marijuana with varying frequency from approximately June 1995 through at least January 2015."

At the hearing, Applicant testified that she last used marijuana approximately January 2015, several months before she began working for her present employer. Upon questioning, Applicant estimated that she used marijuana more than 1,000 times during her life. (Tr at 23-24, 38.)

Applicant was given the opportunity to present after the hearing a written timeline of her marijuana use, which she submitted and which was entered into evidence without objection as Exhibit C. Applicant's marijuana usage was summarized as the following 1995 to 2003: Applicant smoked marijuana in high school, college and during her first year living in the current state in which she now resides; 2003 to 2007: Applicant did not smoke marijuana; 2007 to 2010; Applicant used marijuana with a prescription from her primary care physician since it helped her with her anxiety, and during this period Applicant worked in a creative environment where the use of marijuana was not against policy; 2010 to 2011: Applicant did not use marijuana since she was unemployed, and she was attempting to secure new employment; 2011 to 2012: she used marijuana because her current job did not disallow its use; 2013 to September 2014: Applicant used marijuana to relieve anxiety from being unemployed, and having financial difficulty and marital stress; January 2015 to present: Applicant stopped using marijuana in anticipation of beginning her current employment, and she has not used marijuana through the tenure of her employment. (Exhibit C.)

1.b. The SOR alleges, and Applicant admitted in her RSOR, that she “was arrested in December 2010 for possession of marijuana,” and that she plead guilty to a misdemeanor and was fined. Applicant admitted this allegation at the hearing, and she estimated that she paid a fine of approximately \$400. There were no other requirements as a result of this arrest and conviction. (Tr at 30.) Applicant explained that she was driving from one state to another and when she was stopped at a checkpoint, a dog sniffed a very small amount of marijuana in her car. (Tr at 40-41.)

1.c. The SOR alleges that Applicant purchased marijuana with varying frequency from January 2014 through December 2014. After evidence was introduced, Department Counsel proposed and I granted without objection, to amend SOR allegation 1.c. to conform to the evidence. SOR allegation 1.c. now states that Applicant purchased marijuana with varying frequency from approximately June 1995 through December 2014. Applicant admitted this allegation at the hearing, and she estimated that she last purchased the marijuana at the time that she last used it in either December 2014 or January 2015. (Tr at 30-33.)

1.d. The SOR alleges, and Applicant admitted with explanation in her RSOR, that she intends to continue using marijuana. At the hearing, Applicant testified that she would not use marijuana while she holds a security clearance, and while she was working for her present employer, a position that she values very highly. However, Applicant did testify that she is not certain whether or not she would use marijuana again, if she returned to her previous career in the arts. (Tr at 34-35.)

Mitigation

Applicant testified to a number of factors to help insure that she will not use marijuana while she is in her current employment. She first averred that her life has had a complete transformation since she began working at her present employment. Her finances have been greatly improved, including paying off a lot of her debt, and her credit has increased. This has resulted in her marriage problems being settled. She has joined a personal training facility, where she exercises four days a week, which has greatly helped her minimize her anxiety. (Tr at 48-49.) When asked how the Government could be certain she would not return to marijuana use while she remained at her current employment, she stated, “My entire life has blossomed, and I would not risk that.” She also stated, “I would not do anything that the Department of Defense would feel would jeopardize my stability with my position at [my current employer].”

Applicant also submitted 6 extremely positive and laudatory character letters from individuals who know Applicant professionally and personally. (Exhibits A and D.) She was described by a Senior Lead Engineer at the current employer as “outstanding in honesty and character.” Finally, Applicant submitted two performance awards she earned, her annual review and a Power Point presentation from her volunteer efforts. (Exhibit E.)

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 useful 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 the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common-sense 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. 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 applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining 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 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.

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

Guideline H - Drug Involvement

The security concern relating to the guideline for Drug Involvement is set out 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 judgement and because it raises questions about a person's ability or willingness to comply with laws, rules and regulations.

With respect to Guideline H, the Government has established its case. Applicant's improper and illegal drug abuse, specifically the use and purchase of marijuana as recently as January 2015, is of great concern, especially in light of her desire to have access to the nation's secrets. Applicant's overall conduct pertaining to her illegal substance abuse clearly falls within Drug Involvement ¶ 25(a) "any drug abuse" and (c) "illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution."

However, I find credible Applicant's testimony that she intends to abstain from using marijuana or any illegal drug in the future, as long as she retains her current employment and as long as she holds a security clearance. I also considered Applicant's testimony that she would not risk losing her current employment position, which has given her such satisfaction and greatly improved the quality of her life. Finally, I considered the positive and laudatory character letters, which make Applicant's stated intentions to not use illegal drugs again while holding a security clearance more credible and convincing. Therefore, I conclude that ¶ 26(a) is applicable since "the behavior . . . happened under such circumstances that it is unlikely to recur." Also, ¶ 26(b) "a demonstrated intent not to abuse any drugs in the future," including (3) "an appropriate period of abstinence;" is applicable and mitigating.

In this case, the Government has met its initial burden of proving that Applicant has used illegal drugs under Guideline H. Applicant, on the other hand, has introduced persuasive evidence in rebuttal, explanation, or mitigation, which is sufficient to overcome the Government's case against her. Accordingly, Guideline H of the SOR is concluded 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 the 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 the facts and circumstances surrounding this case. Based on all of the reasons cited above as to why the mitigating conditions are applicable and controlling, I find that the record evidence leaves me with no significant questions or doubts as to Applicant's eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has mitigated the 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.d.:	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.

Martin H. Mogul
Administrative Judge