



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



In the matter of:)
)
-----) ISCR Case No. 15-08269
)
)
Applicant for Security Clearance)

Appearances

For Government:
Adrienne Driskill, Esquire, Department Counsel

For Applicant:
Cathryn E. Young, Esq.
Griffith, Young & Lass

November 29, 2017

Decision

ROSS, Wilford H., Administrative Judge:

Applicant briefly used marijuana over a limited period in 2012 and 2013. Applicant has mitigated her false answers on a government questionnaire in 2014 concerning her drug use. Based on a review of the pleadings, testimony, and exhibits, national security eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on July 28, 2014. (Government Exhibit 1.) On October 23, 2016, 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, 2006.¹

Applicant answered the SOR in writing (Answer) on December 16, 2016, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on February 28, 2017. The case was assigned to me on March 1, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on March 1, 2017. I convened the hearing as scheduled on April 10, 2017. The Government offered Government Exhibits 1 through 3, which were admitted without objection. Applicant testified on her own behalf, and called two additional witnesses. She also submitted Applicant Exhibits A through G, which were received without objection. DOHA received the transcript of the hearing (Tr.) on April 18, 2017. The record was left open until June 15, 2017, for the receipt of additional evidence. On June 15, 2017, Applicant Exhibit H was submitted, and received without objection. The record closed at that time.

Findings of Fact

Applicant is a 43-year-old software engineering augmentee. She has been married to her second husband since June 2014, and has one adult child from her first marriage. Applicant has a bachelor's degree. She is seeking to retain a security clearance in connection with her work in the defense industry. She has worked in the defense industry for 19 years in positions of increasing responsibility.

Paragraph 1 (Guideline H – Drug Involvement and Substance Misuse)

The Government alleges in this paragraph that Applicant is ineligible for clearance because she has used illegal drugs. Applicant admitted both of the allegations under this paragraph, with explanations.

1.a. Applicant used marijuana on about two or three occasions between July and September 2012, and once in April 2013. All the incidents involved another person blowing marijuana smoke into Applicant's face or mouth. Applicant has had no contact with the people she used marijuana with since April 2013. There is no evidence that Applicant used marijuana during the period 2009 through 2011. She has not used marijuana since April 2013. Her current husband does not use drugs of any kind. (Government Exhibit 2 at 9-10; Applicant Exhibit C at 1; Tr. 36, 55-62, 64-70, 84-90.)

¹ I considered the previous Adjudicative Guidelines, effective September 1, 2006, as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines.

1.b. Applicant had a security clearance during the time that she was using marijuana, as set forth above. (Government Exhibit 1 at Section 25; Tr. 62-63.)

Applicant was extremely remorseful over her use of marijuana. This conduct is an aberration, based on her personal history. Applicant evinces a credible intent not to use marijuana in the future, as shown by her testimony and submission of a sworn statement of intent not to use illegal drugs in the future, which includes her consent to an immediate revocation of her national security eligibility for any violation. Applicant has also taken two negative drug tests. (Applicant Exhibits A and B; Tr. 71-73, 78, 92.)

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 admitted the single allegation under this paragraph, with explanations.

2.a. Applicant filled out an e-QIP on July 28, 2014. (Government Exhibit 1.) Section 23 of the questionnaire asked Applicant about her drug use history. First of all, that section asked whether Applicant had used controlled substances during the previous seven years. Applicant stated, “No.” This was a false answer to a relevant question concerning Applicant’s drug use history, since she had used marijuana as described above. The same section asks whether Applicant, “**EVER** illegally used or been otherwise involved with a drug or controlled substance while possessing a security clearance?” (Emphasis in original.) Applicant answered, “No.” This was also a false answer to a relevant question about Applicant’s drug use history, since she had a security clearance at the time she used marijuana in 2012 and 2013.

Applicant admitted that she answered both questions in the negative, but denied that she intentionally falsified her answers. Basically, Applicant did not feel her conduct amounted to use as defined by the questionnaire the first time she filled one out. She saw it somewhat as being exposed to second-hand smoke, since she did not actively smoke marijuana. Applicant further stated that the use just did not occur to her as she filled out the questionnaire. (Answer; Government Exhibit 2 at 10; Tr. 73-75, 84, 95.)

In November 2014 Applicant applied for a job with another Federal agency. As part of the process Applicant filled out a Questionnaire for National Security Positions, which she signed on December 17, 2014. A signed copy of this questionnaire was obtained by Applicant from the other Federal agency, and submitted by her counsel. Section 23 of that questionnaire asks Applicant whether she had used drugs within the last ten years. She answered the question, “Yes,” and proceeded to set forth in detail her brief use of marijuana, as described under Paragraph 1, above. She further admitted on the questionnaire that having people blow smoke into her face and mouth, “was a way for me to justify that I have not used drugs but feel it necessary to state here.” Applicant also

admitted that she had a security clearance at the time she used marijuana. (Applicant Exhibit H; Tr. 75-76, 100-105.)

Applicant was subsequently interviewed by an investigator from the Office of Personnel Management (OPM) on April 26, 2015. During that interview Applicant set forth her drug use in detail. (Government Exhibit 2 at 9-10; Tr. 76-78.)

Mitigation

Applicant is highly respected by her co-workers, superiors, active duty service members, and civilian employees of the military. Five letters of recommendation were submitted by Applicant. The writers all had knowledge of the allegations in the SOR. Applicant is described as “a trustworthy and reliable individual,” and a “valuable and knowledgeable employee.” All the writers recommend that she retain her security clearance. (Applicant Exhibit C at 2-6.)

A co-worker testified on Applicant’s behalf. She has worked with Applicant since October 2016, and has knowledge of the allegations in the SOR. The witness believes Applicant shows good judgment, except for these isolated incidents, and should be granted a security clearance. (Tr. 16-26.)

Applicant has been a successful employee for many years. She has received various recognitions for her performance. Her evaluations indicate that she, “Stretches and Often Exceeds Expectations.” This term is defined to mean that Applicant’s, “Performance consistently meets and often exceeds the scope of job responsibilities by stretching beyond the normally accepted performance.” (Applicant Exhibits D and G.)

Policies

When evaluating an applicant’s national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s national security eligibility.

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. 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, “Any doubt concerning personnel being considered for national security eligibility 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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.”

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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “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.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 (Guideline H – Drug Involvement and Substance Misuse)

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

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual’s reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person’s ability or willingness to comply with laws, rules, and regulations. *Controlled substance* means any “controlled substance” as defined in 21 U.S.C. §802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

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

- (a) any substance misuse (see above definition); and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

I have also examined the mitigating conditions under AG ¶ 26 and find that the following are controlling in this case:

- (a) the behavior happened so long ago, was so infrequent, or happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and
- (b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome the problem, and has established a pattern of abstinence, including, but not limited to:

- (1) disassociation from drug-using associates and contacts;
- (2) changing or avoiding the environment where drugs were used; and
- (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

Applicant used marijuana no more than five times over two brief periods of time in 2012 and 2013. This conduct was completely out of the normal for Applicant. It has been four years since that activity, with no sign of recurrence. She no longer associates with the people she used drugs with, and is now married to someone who does not use drugs. She has provided a statement of intent and changed her environment. She has fully mitigated the Government's concerns and Paragraph 1 is found for Applicant.

Paragraph 2 (Guideline E – Personal Conduct)

The security concern relating to the guideline for Personal Conduct 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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. One is potentially applicable in this case:

(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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

The following mitigating conditions are applicable under AG ¶ 17:

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

(c) the offense is so minor, or so much time has passed, or the behavior was 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.

Applicant's answers to two questions concerning drug use on her e-QIP were false. Applicant persuaded herself that having someone else blow smoke in her face did not count as use. Upon reflection, Applicant realized that this attempt at justification was wrong, and subsequently told the truth. Applicant corrected the falsifications on a subsequent questionnaire provided to another Government agency only five months later, without being confronted. When interviewed by an investigator from OPM several months later, she was completely forthcoming, again without being confronted. These were prompt, good-faith efforts to correct her omissions. Applicant deeply regrets her conduct, which is extremely unlikely to recur. Under the particular circumstances of this case

Applicant has mitigated the security concerns of her conduct. Paragraph 2 is found for Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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(d):

- (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 national security eligibility 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 short-term marijuana use, and her false answers to the Government concerning that drug involvement. Overall, the record evidence does not create substantial doubt as to Applicant's present eligibility for national security eligibility and 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
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 or continue Applicant's national security eligibility and access to classified information. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge