



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 16-03618
)	
)	
Applicant for Security Clearance)	

Appearances

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

12/14/2017

Decision

HOGAN, Erin C., Administrative Judge:

On December 28, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under 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 within the Department of Defense after September 1, 2006. On June 8, 2017, the AGs were updated and the AGs effective September 1, 2006 were cancelled. This decision will be decided based on the new AGs effective on June 8, 2017. If I were to consider this case under the AGs effective September 1, 2006, it would result in the same outcome.

On January 23, 2017, Applicant answered the SOR and requested a decision based on the administrative record. Department Counsel prepared a File of Relevant Material on February 24, 2017. Applicant received the FORM on March 1, 2017. She had thirty days to submit matters in response to the FORM. Applicant did not submit matters. On April 4, 2017, the FORM was forwarded to the Hearing Office. The FORM

was assigned to me on October 1, 2017. Based upon a review of the pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant is a 31-year-old employee of a Department of Defense contractor seeking a security clearance. She has worked for the DOD contractor since August 2011. She has a high school diploma. She is married and has two children. (Item 2; Item 4; Item 5)

Applicant submitted her most recent security clearance application on February 6, 2015. A subsequent background investigation revealed some security concerns related to Applicant's past involvement in her boyfriend's (now husband's) criminal marijuana business. In February 2010, Applicant's husband was convicted of possession of marijuana for sale. (Item 7). During an interview on August 23, 2013, with an investigator conducting a previous background investigation of Applicant, Applicant told the interviewer that she purchased marijuana on her husband's behalf at least 20 times. The last time she purchased marijuana for her husband was in 2012. She also sold marijuana on his behalf when he was not available on approximately 15-20 occasions. (Item 6 at 2-8)

Applicant first submitted a security clearance application on August 30, 2011. In response to section 23c of her 2011 security clearance application. Applicant answered, "No" to the question: "In the last seven years, have you been involved in the illegal possession, purchase, manufacture, trafficking, production, transfer, shipping, receiving, handling, or sale of any controlled substance . . . ? She did not disclose that she often purchased, possessed, handled, and transferred marijuana on behalf of her husband. (Item 3, section 23).

She was subsequently granted a secret security clearance in September 2011. Applicant submitted another security clearance application on January 11, 2013. A subsequent background investigation resulted in Applicant's clearance being denied by another agency on February 10, 2014, based on her involvement in purchasing, possessing and transferring marijuana and her failure to disclose her illegal drug activity on her January 2013 security clearance application. (Item 6 at 8-9)

On her most recent security clearance application, dated February 6, 2015, Applicant answered, "No" to "Section 23 – Illegal Use of Drugs or Drug Activity . . . In the last seven (7) years have you been involved in the illegal purchase, manufacture, cultivation, trafficking, production, transfer, shipping, receiving, or handling or sale of any drug of controlled substance?" She did not disclose her drug trafficking activities on behalf of her husband, with the latest incident occurring in 2012. (Item 2, section 23)

On her February 2015 security clearance application, Applicant also answered, "No" to Section 23 - While Possessing a Security Clearance. Have you EVER illegally used or otherwise been involved with a drug or controlled substance while possessing a

security clearance other than previously listed?” Applicant received a security clearance in 2011 and she continued to sell or purchase marijuana for her husband until 2012. (Item 2, section 23)

Applicant also did not disclose that her security clearance was denied by another government agency in December 2013, in response to Section 25 – Investigation and Clearance Record, of her February 2015 application, “Have you ever had a security clearance eligibility/access authorization denied, suspended, or revoked?” (Item 2, section 25)

Finally, it is alleged that Applicant deliberately falsified material facts during an interview with an investigator representing the Department of Defense on May 16, 2016, when she told the investigator that she was denied a security clearance by another government agency because she transferred marijuana from one hand to another hand with no money involved and rode in a car with marijuana. In other words, she minimized the amount of times she helped her husband sell or purchase marijuana. (Item 4)

In response to the SOR, Applicant denied the allegations in SOR ¶¶ 1.a – 1.e, 1.h. She admits the allegations in SOR ¶¶ 1.f and 1.g. Regarding SOR ¶ 1.f, Applicant admits to saying “No” regarding being involved with a drug or controlled substance while possessing a security clearance because she claims that it is the truth. She admits to giving the wrong answer in SOR ¶ 1.g because she was confused about the question. (Response to SOR)

Applicant admits to making some bad decisions when she was younger, but claims she did not assist her husband with selling and purchasing marijuana as often as alleged in the SOR. She also claims the conduct occurred in 2009 or earlier, well before she was granted a security clearance. She believes she mixed up her dates because she felt she was put on the spot during the interview. She states she was young and immature when she was involved in marijuana trafficking. She claims she is now mature, responsible, honest, devoted, and trustworthy. She stays out of trouble and now has cares for her children. (Response to SOR)

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 overarching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(a), 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 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.

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 that 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 EO 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).

Conclusion

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 the national security or adjudicative processes. . . .

The following disqualifying conditions potentially apply to Applicant’s case:

AG ¶ 16(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;

AG ¶ 16(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to any employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative; and

AG ¶ 16(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

AG ¶ 16(a) applies with regard to Applicant's deliberate falsification of her 2011 and 2015 security clearance applications as alleged in SOR ¶¶ 1.d – 1.g. Applicant repeatedly lied about her involvement with her husband's illegal marijuana business up until 2012 despite admitting to the conduct in previous security clearance background investigations. She also failed to disclose on her 2015 security clearance application that she was denied a security clearance in December 2013 and failed to list that she assisted her husband with purchasing, selling, and transferring marijuana up until 2012 after applying for and being granted a security clearance in 2011.

AG ¶ 16(b) applies with respect to Applicant's minimization of the extent of her involvement with her husband's illegal marijuana business during a May 2016 background interview.

AG ¶ 16(c) applies with regard to Applicant's multiple purchases, transfers and sales of marijuana on behalf of her husband until around 2011 and 2012. Some of this conduct occurred while Applicant was granted a security clearance. (SOR ¶¶ 1.a – 1.c) Although the misconduct occurred several years ago, Applicant's involvement in her husband's illegal marijuana business raises questions about her judgment, trustworthiness, candor, and willingness to comply with rules and regulations. As a result, it raises questions about her ability to properly safeguard classified information.

Under Guideline E, the following mitigating conditions potentially apply in Applicant's case:

AG ¶ 17(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

AG ¶ 17(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 is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

None of the mitigating conditions apply. Applicant admitted to assisting her then boyfriend, now husband, with his illegal marijuana business for a period of time up until 2012. While there is no evidence that she used marijuana, she admits to purchasing, transferring, and selling marijuana for her husband when he was unavailable to do so himself. She lied about this misconduct on her 2011 security clearance application. She was granted a security clearance and continued to assist her husband with his illegal marijuana business until 2012. Her security clearance was revoked by another government agency in 2014. Applicant continued to lie about her past misconduct on her 2015 security clearance application and during background investigation interview in May 2016. Questions remain about Applicant's judgment, trustworthiness and reliability. Personal Conduct concerns are not mitigated.

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(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 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. I considered Applicant is now a

mother to two children and has matured since her earlier misconduct. However, she continues to deliberately mislead the government about her past misconduct. Questions remain about Applicant's trustworthiness and reliability. Security concerns under personal conduct are not mitigated.

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, Guideline E:	AGAINST APPLICANT
---------------------------	-------------------

Subparagraphs 1.a – 1.h:	Against Applicant
--------------------------	-------------------

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ERIN C. HOGAN
Administrative Judge