



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



In the matter of:

ISCR Case No. 17-00228

Applicant for Security Clearance

**Appearances**

For Government: Alison O'Connell, Esq., Department Counsel

For Applicant: *Pro se*

11/29/2017

**Decision**

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings and exhibits, I find that Applicant did not mitigate personal conduct security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on July 31, 2014, to retain a security clearance required for her duties with a defense contractor. A security investigator from the Office of Personnel Management (OPM) interviewed Applicant on October 11, 2016. The government also sent Applicant interrogatories, which she answered on March 1, 2017. After reviewing the results of the background investigation, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns for personal conduct (Guideline E) on April 11, 2017. The SOR alleges that Applicant used marijuana while being eligible for access to classified information, and that she provided false responses to drug misuse questions on the e-QIP and to questions from a security investigator. The actions were 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 in the DOD on September 1, 2006.

Applicant provided a detailed answer to the SOR on May 18, 2017. She admitted with explanation to the use of marijuana and to providing false information to the security investigator. She denied with explanation the allegation that she provided false information on the e-QIP. Applicant requested that her case be considered on the record. (Item 4) Department Counsel submitted the Government's written case on June 14, 2017. (Item 11) Applicant received a complete copy of relevant material (FORM) consisting of ten items on June 28, 2017. She was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. She provided additional material in response to the FORM on July 25, 2017. (Item 12) Department Counsel had no objection to consideration of the additional material. (Item 13) I was assigned the case on October 23, 2017.

The Director of National Intelligence issued Security Executive Agent Directive 4, establishing National Security Adjudicative Guidelines for *Determining Eligibility for access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs) which are applicable to all individuals requiring initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the September 1, 2006 AGs and were effective on or after June 8, 2017. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.

### **Procedural Issues**

Applicant was advised in the FORM that the summary of the Personal Subject Interview (PSI) with an OPM investigator (Item 6) was not authenticated and could not be considered over her objection. She was further advised that she could make any corrections, additions, or deletions to the summary to make it clear and accurate, and could object to the admission of the summary as not authenticated by a Government witness. She was additionally advised that if no objection was raised to the summary, the administrative judge could determine that she waived any objection to the admissibility of the PSI summary. Applicant did not object to consideration of the PSI in her response to the FORM. Since she did not raise any objection to consideration of the PSI, I considered information in the PSI in my decision.

### **Findings of Fact**

After a thorough review of the pleadings and exhibits, I make the following additional findings of fact. Applicant is 30 years old. She is a college graduate with a bachelor's degree awarded in May 2009. She is not married. She has been employed as an auditor and accountant by a defense contractor since April 2009. She was granted eligibility for access to classified information in October 2009. (Item 5, e-QIP, dated July 31, 2014; Item 6, PSI, dated October 11, 2016)

The SOR details three allegations under the personal conduct security concern (Guideline E). SOR 1.a alleges that Applicant used marijuana on at least one occasion while holding a Top Secret DOD security clearance. SOR 1.b alleges that Applicant falsified facts on the e-QIP completed on July 31, 2014, by answering “no” to question 23 asking if in the last seven years, she used a drug or controlled substance. SOR 1.c alleges that Applicant falsified material facts in the PSI by informing the investigator that she only used marijuana on one occasion in 2009. (Item 1)

Applicant completed her e-QIP in April 2009. In response to drug use questions on the e-QIP, she denied using any illegal substance in the previous seven years. Based on the information she provided on the e-QIP and a background investigation, she was granted eligibility for access to classified information in October 2009. (Item 9 and 10) In February 2014, Applicant completed a security clearance application for another government agency. She admitted using marijuana on one occasion in October 2013. (Item 8)

In July 2014, Applicant completed another e-QIP for a DOD agency. In response to the drug use question on the e-QIP, she denied using marijuana in the previous seven years or at least not since July 2007. (Item 5) Applicant was interviewed by a security agent in October 2016. She denied in the interview using an illegal substance in the last seven years. The security agent asked her about her response on the security application for the other government agency. Applicant again denied using marijuana in October 2013, but admitted she had used marijuana in the spring of 2009 to celebrate her college graduation. In her response to DOD interrogatories concerning her drug use and her responses concerning her drug use, Applicant explained that she provided false information about illegal drug use because she feared losing her security clearance. (Item 6)

In responding to the FORM, Applicant took responsibility for her one-time use of marijuana in October 2013. She acknowledged she did not disclose her use of marijuana for fear of losing her access to classified information. While acknowledging that her decision to use marijuana was not right, she stated that the decision does not hinder her judgment. She provided a negative test result for drug use. She maintains that she is a good citizen, with good character, and has not received any disciplinary action. (Item 12)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the Administrative Guidelines. 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 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. 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 burden of persuasion 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.

## **Analysis**

### **Personal Conduct**

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 and sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during the national security investigation and adjudicative process. (AG ¶ 15). Personal conduct is always a security concern because it asks whether the person's past conduct justifies confidence the person can be trusted to properly safeguard classified or sensitive information.

Applicant admitted she used marijuana in October 2013 while being eligible for access to classified information. In February 2014, she admitted to another government agency on a security clearance application, her use of marijuana in October 2013. In July 2014, Applicant denied in a DOD e-QIP that she used marijuana in the previous seven years. In an October 2016 PSI, she denied using marijuana in October 2013, but admitted using marijuana in the spring 2009. Applicant's use of marijuana and her

denial of use during the security clearance process raises the following disqualifying conditions under 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 national security eligibility or trustworthiness, or award fiduciary responsibilities;
- (b) deliberately providing false or misleading information, or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other government representative; and
- (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.

I considered the following Personal Conduct Mitigating Conditions under AG ¶17:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (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;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressor, circumstances, or factors that contributed to untrustworthy, unreliable, or other appropriate behavior, and such behavior is unlikely to recur;
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability.

The mitigating conditions do not apply. Applicant admitted that she twice deliberately provided falsified information concerning her misuse of marijuana while being eligible for access to classified information. The record shows that she made little if any effort to tell a consistent, straight, truthful story. She deliberately provided inaccurate information because she was concerned about losing her security clearance. Since the security clearance process relies on an applicant providing correct information, Applicant's action in providing false information is not a minor offense. The information concerning her drug misuse is accurate because it came directly from Applicant when she completed a security clearance application for another government agency. Applicant presented no information to establish that she acknowledged the problem of providing false information or that she obtained counseling to change her behavior.

The personal conduct security concern is that Applicant "deliberately" did not provide correct, true, and accurate information. Applicant admitted that she did not provide correct information concerning her misuse of a controlled substance because of her fear of losing her eligibility for access to classified information. Applicant not only misused a control substance while being eligible for access to classified information but she falsified information about her use twice. I find that there is sufficient evidence to conclude that Applicant deliberately omitted, concealed, or falsified relevant information concerning her misuse of an illegal substance on her security questionnaire and to the security investigator. Applicant failed to mitigate the security concern for her misuse of marijuana while being eligible for access to classified information, and then not being truthful about her use of the illegal substance.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information 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 eligibility for access to classified information must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant has not established that she did not deliberately provide false information concerning her drug use on two separate occasions during the security clearance process. These facts leave me with questions and doubts about Applicant's judgment and her suitability for access to classified information. For all these reasons, I conclude that Applicant has not mitigated drug involvement and personal conduct security concerns. Eligibility for access to classified information is denied.

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:

Subparagraphs 1.a – 1.c: Against Applicant

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

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