



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



In the matter of:)
)
) ISCR Case No. 17-01260
)
Applicant for Security Clearance)

Appearances

For Government: Andre Gregorian, Esq., Department Counsel
For Applicant: Alan Edmunds, Esq.

08/30/2018

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense's (DOD) intent to deny her eligibility for a security clearance to work in the defense industry. Applicant failed to mitigate the security concerns raised by her history of illegal drug use, purchase, and prescription drug abuse. Clearance is denied.

Statement of the Case

On May 16, 2017, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the drug involvement and substance misuse guideline.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant's security clearance and recommended that the case be submitted to a Defense Office of Hearings and Appeals (DOHA) administrative judge for a determination whether to deny her security clearance.

Applicant timely answered the SOR and requested a hearing. At the hearing, convened on May 21, 2018, I admitted Government's Exhibits (GE) 1 and 2, and

¹ The DOD acted 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), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on September 1, 2006.

Applicant's Exhibits (AE) A through M, without objection. DOHA received the transcript (Tr.) on June 6, 2018.

Procedural Matters

After the SOR was issued in the case, the Director of National Intelligence (DNI) issued the Security Executive Agent Directive 4, establishing the National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The 2017 AG superseded the AG implemented in September 2006, and they are effective for any adjudication made on or after June 8, 2017. Accordingly, I have applied them in this case.

Findings of Fact

Applicant, 25, has worked for a federal contractor since April 2015. She completed a security clearance application, her first, in May 2015. Applicant disclosed the use and purchase of illegal drugs and misuse of prescription drugs between 2007 and 2015. The SOR alleges that Applicant used: marijuana (March 2007 to August 2016); hallucinogenic mushrooms (June 2010 to November 2012); ecstasy (June 2011 to December 2014); LSD (June 2011 to November 2014); cocaine (October 2011 to October 2014); dimethyltryptamine (DMT) (March 2013); and Adderall (April 2011 to December 2012). The SOR also alleges that Applicant purchased illegal drugs multiple times between March 2007 and August 2016. Applicant admits the SOR allegations.²

Applicant began using marijuana at age 14 while in high school. When she attended college between August 2010 and December 2013, her drug use expanded to include recreational use of hallucinogenic mushrooms, ecstasy, LSD, cocaine, and Adderall. In March 2013, Applicant used DMT, an experience she considered the "scariest and most overwhelming thing I've ever experienced in my life . . ." However, she continued to use illegal drugs after this incident. Applicant's use occurred primarily in social settings. She continued to use marijuana, ecstasy, cocaine, and LSD in the months after she graduated and remained in her college community. She continued to use these drugs while working as an intern for her mother's cosmetic company between June and September 2014 and during her first professional role at a financial services firm between September and December 2014.³

Applicant moved to her current city in January 2015. She cited the move as a big change and an opportunity for a fresh start. However, she continued to use marijuana during her internship with the House of Representatives between January 2015 and March 2015 and while working as a congressional staffer between March 2015 and April 2015.

² Tr. 13-14, 16-20, 28-32; GE 1.

³ Tr. 33-36; GE 1.

Applicant began working for her current employer in April 2015. She was aware that the company had a drug-free work environment. On her security clearance application, Applicant noted:

I realize fully that my use/purchase of drug in college and a bit beyond does not make me an ideal candidate for a security clearance. It shows lack of judgment and a disregard for the rules. I look back on these decisions now, some not so long ago, and do truly realize how stupid I have been. . . . On January 3, 2015, I picked up my life, put it in a suitcase, and moved to [current city] . . . This was and still is a huge turning point in my life. While I cannot take back the things I've done, I can only put my best foot forward and commit fully to putting this part of my life behind me, something I've begun to and will continue to do so as I get older.⁴

With respect to future marijuana use, Applicant further explained:

I do not intend to smoke weed anymore because I cannot be productive whatsoever when high. I do not like the sensation of being high anymore, it makes me uneasy and all too aware that this is wrong. Weed has been something which I've realized does not add any value to my life and know I can do without, as I live in a city where weed is legal and everywhere. In college, I would have given in to social situations where weed was involved, however, I know myself and know I can say "no." Frankly, I am a grown up with a good job and surrounded by successful [people]; pot is something I've begun to associate with being lazy and unproductive.⁵

In July 2016, Applicant received a promotion to her current position. One month later, she purchased and used marijuana edibles while on vacation in another U.S. city where it is legal to do so. She believed that because it was legal in the vacation city that she was not violating any laws or her employer's drug-free policy. Although she did not report this instance of drug use to her employer, she did disclose it in her February 2017 background interview. During the interview, Applicant reiterated her intent not to use illegal drugs in the future. After the SOR was issued in May 2017, Applicant voluntarily submitted to a drug test, which showed no evidence of recent drug use. In July 2017, Applicant executed a signed statement of intent to abstain from illegal drug use with revocation of access to classified information for any future use.⁶

Applicant claims her days of illegal drug use are behind her and that she no longer associates with drug users. She is ashamed of her history of illegal drug use. Applicant is growing in her career field and is well regarded by her employer and clients. In support of her application for access to classified information, Applicant provided

⁴ GE 1.

⁵ GE 1.

⁶ Tr. 21; GE 2; AE D-E.

eight favorable character references, including the two Congressmen for whom she worked between January and April 2015. Applicant claimed that each reference was aware of her history of illegal drug use, but such knowledge is not reflected in any of the letters.⁷

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines 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 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 the 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

⁷ Tr. 21-25, 39, 41-42; AE F-M.

Section 7 of EO 10865 provides that adverse 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 illegal use of controlled substances can raise questions about an individual’s reliability and trustworthiness, 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.⁸ Applicant’s admissions establish a *prima facie* case that Applicant used illegal drugs, abused prescription drugs, and purchased illegal drugs between 2007 and 2016.⁹

The record contains some evidence in mitigation, specifically, Applicant’s full and candid disclosure of her history of illegal drug involvement during the adjudication process, as well as her signed statement of intent to abstain from illegal drug use in the future. However, these facts do not mitigate the security concerns. Applicant’s two years of sobriety are not enough to mitigate her ten-year history of recreational drug use. Also of concern is that Applicant continued to use illegal drugs after completing her security clearance application in which she acknowledged the negative security implications of her history of illegal drug use, and promised to refrain from such activity in the future.

Based on the record, I have significant reservations about Applicant’s current security worthiness. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). The purpose of the security clearance adjudication is to make “an examination of a sufficient period of a person’s life to make an affirmative determination that the person is an acceptable security risk.”¹⁰ During the current adjudication, Applicant revealed conduct that supports a negative whole-person assessment of her judgment, reliability, and trustworthiness. Her behavior also casts doubt on her ability to follow rules and regulations. Accordingly, her access to classified information is denied.

⁸ See, AG ¶ 24.

⁹ AG ¶¶ 25(a) and (c).

¹⁰ AG ¶ 2(d).

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 and
Substance Misuse:

AGAINST APPLICANT

Subparagraphs 1.a – 1.i:

Against Applicant

Conclusion

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

Nichole L. Noel
Administrative Judge