



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



In the matter of:

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ISCR Case No. 17-01966

Applicant for Security Clearance

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel

For Applicant: *Pro se*

02/22/2018

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant used marijuana about 50 times total between April 2006 and December 2015 and cocaine about five times total between July 2014 and April 2016. Applicant does not intend to use any illegal drug in the future. Her candor about her drug involvement lends credence to her assertions that her drug involvement is safely in the past. Clearance is granted.

Statement of the Case

On June 23, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline H, drug involvement and substance misuse, which explained why it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for her. The DOD CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the National Security Adjudicative Guidelines (AG) effective June 8, 2017, to all adjudications for national security eligibility or eligibility to hold a sensitive position.

On July 20, 2017, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On September 12, 2017, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On October 12, 2017, I scheduled a hearing for November 14, 2017.

I convened the hearing as scheduled. Two Government exhibits (GEs 1-2) and three Applicant exhibits (AEs A-C) were admitted into evidence without objection. Applicant testified, as reflected in a transcript (Tr.) received on November 24, 2017.

Findings of Fact

The SOR alleges that Applicant used marijuana with varying frequency from approximately April 2006 to December 2015 (SOR ¶ 1.a) and cocaine with varying frequency from approximately July 2014 to April 2016 (SOR ¶ 1.b). When Applicant responded to the SOR allegations, she admitted the drug involvement as alleged, but she also indicated that most of her marijuana use was in 2010 when she was working as a bartender and waitress and that her cocaine use was “infrequent and intermittent.” She explained that she had ceased her illegal drug use before she applied for her position with a defense contractor. After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is 34 years old. She and her spouse married in June 2015. She was awarded a bachelor’s degree in May 2006 and a master’s degree in November 2008. She was employed full time as a management analyst by a defense contractor from June 2016 until July 2017, when she was placed in an on-call part-time status. She works as a bartender at a restaurant, but intends to return to the defense contractor job if her clearance is adjudicated favorably. (GE 1; AE A; Tr. 24-28.)

Applicant first used marijuana in April 2006. She used the drug approximately 50 times, including once in edible form, to a last use in December 2015. She used the drug while socializing with her then roommate, her brother, or friends. Friends provided the marijuana, although Applicant contributed up to \$20 toward the purchase at least twice. Most of her drug use occurred after she returned from studying abroad for her master’s degree. From June 2010 to June 2011, Applicant shared an apartment with someone who regularly used marijuana, and Applicant used the drug with her with varying frequency. Applicant did not continue her association with her former roommate after that year, but she occasionally smoked marijuana with some of her co-workers. She worked as a full-time bartender at an Irish pub from September 2008 to June 2016. (GEs 1-2; Tr. 22, 35.)

In 2012, Applicant met her spouse, who reportedly disapproved of her use of marijuana. While Applicant’s use of marijuana “tapered off a bit,” she continued to use the drug on occasion. After Applicant and her spouse became engaged in February 2014, she resolved to stop using marijuana. (Tr. 23, 27-29.) She abstained from marijuana use until December 2015, when she and her husband each ingested a gummi bear containing

tetrahydrocannabinol (THC). They were socializing at the time with one of her spouse's friends, who provided the edible. (Tr. 29-30.) Applicant testified that she and her spouse both regret their use of marijuana on that occasion, which she attributes to intoxication and a bad decision. (Tr. 31.)

Applicant first tried cocaine in July 2014 while with her spouse at a party at a friend's home. She used cocaine approximately five times with her last use occurring at a party in April 2016. She and her spouse had a mutual friend who was a regular user of the drug. (GEs 1-2; Tr. 31.) In each instance, Applicant had been drinking before she used cocaine. (Tr. 34.) The cocaine was provided by friends although Applicant contributed up to \$20 for the drug. (GE 2.)

Applicant began working for a defense contractor in June 2016. On June 24, 2016, she completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86). She responded affirmatively to an inquiry concerning any illegal use of drugs or controlled substances in the last seven years and disclosed that she used marijuana between April 2006 and December 2015, including once in edible form. She described her use as "infrequent and intermittent," probably around 50 times total. She denied any intention to use marijuana in the future, citing lack of interest but primarily not wanting to compromise her defense-contractor employment or her ability to obtain and maintain a security clearance. Applicant also disclosed that she "snorted relatively small amounts of cocaine in social situations" around five times between July 2014 and April 2016. She denied any intention or desire to use cocaine in the future. (GE 1.)

On March 3, 2017, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). Applicant gave an account of marijuana use and cocaine use consistent with the information provided on her SF 86. Applicant denied any current use of marijuana or cocaine and any intention to use the drugs in the future. She admitted that she was still associating with people who use cocaine. (GE 2.) On July 20, 2017, Applicant executed a statement of intention to abstain from illegal drug involvement and substance misuse with immediate revocation of her security clearance eligibility for any violation. (AE B.)

Applicant denies any illegal drug use since April 2016. She testified that on her hiring by the defense contractor, she made "abundantly clear" to all of her friends that she does not want illegal drugs to be part of her life any longer. (Tr. 24, 35.) She attests that she and her spouse, who works an electrician and does not require a security clearance, have since disassociated themselves from the friend that regularly used cocaine ("the main instigator of the cocaine). They did not want the drug to be part of their lives. (Tr. 32-33, 35.)

Applicant still associates on a weekly basis with some friends with whom she used cocaine in the summer of 2014. After Applicant told her friends that she was no longer using any illegal drugs, the friends used cocaine at a mutual friend's home in the summer of 2016. Although they used cocaine in another room, Applicant was aware of their drug use and she let them know that she did not appreciate it. Applicant believes these friends

no longer use cocaine because she has not seen them use drugs, and her friends have not spoken of any drug use. (Tr. 33, 35-37.)

Applicant performed well in her defense-contractor employment. She met, and in some aspects of customer relations and communication exceeded, her employer's expectations. She proved to be a quick learner, a team player, and an excellent communicator with co-workers and customers. Because of her "superb" organizational skills and her "outstanding" work ethic, Applicant was regarded as a valuable asset by her manager. (AE C.) On the issuance of the SOR, Applicant was placed on part-time on-call status to facilitate her recall if her security clearance is approved. She began working as a bartender at a restaurant located two towns away instead of returning to the "toxic environment" of the Irish pub, where she "might be tempted to go back to any old habits that [she] had." (Tr. 25.)

A couple of months into her job at the restaurant, Applicant began to experience a lack of fulfillment similar to that felt when she worked at the Irish pub. Applicant began volunteering in a science, technology, engineering, and mathematics (STEM) mentoring program at the local Boys and Girls Club. She appreciates that opportunity it has given her to be a positive role model in her community. (Tr. 25-26.)

Character References

Applicant's task manager in her defense-contractor employment indicated that Applicant consistently demonstrated professionalism, reliability, and good judgment as a management analyst. She produced high quality work within deadlines and thrived in the corporation's structured environment. To this manager's knowledge, Applicant ceased her illegal drug involvement before she started her defense-contractor job and completed her security clearance application. (AE A.)

An administrative manager, who had known Applicant before she began working for the defense contractor, attested to Applicant's contributions and maturation over her first year at the company. She is aware that Applicant previously made "the unfortunate decision to seek other outlets at times," but illegal drug use was not a regular habit of Applicant's. This manager had not witnessed Applicant using any illegal drug. She considers it a loss to the company and military customer to not have Applicant on the team. (AE A.)

Applicant's spouse believes that Applicant wasted her intelligence when she worked at the Irish pub. He observed a significant difference in her attitude and outlook when she worked for the defense contractor and considers the job to have had a significant influence on her level of maturity. (AE A.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing

that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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).

Analysis

Guideline H: Drug Involvement and Substance Misuse

The security concerns about drug involvement and substance misuse are 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.

Applicant used marijuana on approximately 50 occasions between April 2006 and February 2014. She then abstained from marijuana with the resolve not to use it again because her spouse (then fiancé) reportedly disapproved of her marijuana use. However, Applicant and her spouse each ingested an edible containing THC on an occasion in December 2015. Applicant used cocaine with her spouse and some friends on approximately five occasions between July 2014 and April 2016. Disqualifying condition AG ¶ 25(a), "any substance misuse (see above definition)," applies. Applicant did not purchase either marijuana or cocaine, but there were occasions when she gave her friends up to \$20 for the drugs that she used. AG ¶ 25(c), "illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia," has only minimal applicability in this case.

AG ¶ 26(a) provides for mitigation when the drug involvement and substance misuse "happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment." Applicant's marijuana use was at its heaviest between 2010 and 2011, when she lived with a roommate who used marijuana regularly. Yet, while there may have been no pattern to her marijuana use, it occurred too many times and over too many years to reasonably apply AG ¶ 26(a). Her cocaine use was limited and intermittent but recent as of her application for security clearance eligibility in June 2016.

AG ¶ 26(b) applies when an individual acknowledges his or her drug involvement and has no intention of future drug activity:

(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this 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's drug involvement predates her application for a DOD security clearance and her employment with a defense contractor. She resolved at that time not to use any

illegal drug in the future. Her candid disclosure of then very recent cocaine use and recent marijuana use on her SF 86 reflects favorably on her credibility and allows me to accept as sincere her stated intention to abstain from all illegal drugs in the future. She has executed the signed statement of intent required to trigger AG ¶ 26(b)(3). At the same time, in assessing the risk of recurrence, I cannot ignore the fact that she decided to cease her marijuana involvement on her engagement in February 2014 because her then fiancé reportedly disapproved of her marijuana use, but then she and her spouse both ingested an edible containing marijuana in December 2015. To her credit, Applicant acknowledges that she made a poor decision that she does not intend to repeat.

I have no reason to doubt that Applicant and her spouse have disassociated themselves from the friend who was a regular user of cocaine. Yet AG ¶ 26(b)(1) is only partially satisfied. Applicant continues to associate on a weekly basis with other friends involved in her cocaine use, and they used cocaine at a social gathering where Applicant was present in the summer of 2016 after she had told them that she was no longer using illegal drugs and no longer wanted part of the drug environment. Applicant believes that these friends have ceased their drug involvement because she has not seen them use drugs since then, and they have not spoken about it. There is no corroboration that these friends are maintaining a drug-free lifestyle, but there is also no evidence that they have used any illegal drug around Applicant since the summer of 2016.

Applicant understands that she did not display good judgment when she used illegal drugs. More importantly, she has taken concrete steps to minimize the risk of recurrence of illegal drug use beyond telling her friends that she no longer wants illegal drugs in her life. When she was let go from her full-time job by the defense contractor because of the lack of work without a clearance, she recognized that she could not return to her previous employment at the Irish pub that was conducive to her marijuana use. She took a position at a restaurant two towns away from the “toxic environment” of the Irish pub. When she began experiencing a lack of personal fulfillment in that job, she began volunteering in a STEM program at a local Boys and Girls Club to find purpose consistent with her education and interests. Her desire to return to her defense-contractor job, which by all accounts provided the structure and stability she needed to mature personally and thrive professionally, is seen as a significant deterrent to relapse.

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 her conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(d).¹ In making the overall commonsense determination required under AG ¶ 2(c), I note

¹ The factors under AG ¶ 2(d) are as follows:

(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

that most of Applicant's drug use occurred when she was in her mid to late 20s after she had completed graduate studies. The toxic environment of the bar may have given her little motivation to consider the impact of illegal drug use on her future, but it does not mitigate or justify her repeated disregard of the drug laws. Her illegal drug involvement was limited after February 2014 to a one-time ingestion of an edible containing marijuana in December 2015 and to use of cocaine on five occasions between July 2014 and April 2016. However, she can reasonably be expected to have exercised better judgment. Her participation in illegal drug use was knowing and voluntary and at an age when she can be expected to have complied with the drug laws. She had been drinking before she used the marijuana in December 2015 and before each instance of her cocaine use. Alcohol is an aggravating factor rather than an excuse in assessing her judgment in the security clearance context.

Applicant's honesty about her drug involvement shows that her representations can be trusted, but it does not entitle her to security clearance eligibility. Even so, security clearance determinations are not intended as punishment for past wrongdoing. By all accounts, Applicant matured over the year that she worked for a defense contractor. The job apparently provided the structure and challenges she needed to grow personally and maintain a more responsible lifestyle consistent with her age and education. She had abstained for approximately 18 months as of her security clearance hearing in November 2017, which is of relatively short duration when compared to the years over which she used marijuana. However, after considering all the facts and circumstances, including the affirmative steps Applicant has taken to avoid a recurrence, I find that it is clearly consistent with the national interest to grant Applicant security clearance eligibility.

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 H: FOR APPLICANT

Subparagraphs 1.a-1.b: For Applicant

Conclusion

In light of all of the circumstances, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Elizabeth M. Matchinski
Administrative Judge

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.