



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



In the matter of:)
)
) ISCR Case No. 17-02779
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

09/04/2018

Decision

Curry, Marc E., Administrative Judge:

Given the recency of Applicant’s marijuana usage, it is too soon to conclude that she has mitigated the drug involvement security concern. Clearance is denied.

Statement of the Case

On October 11, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guidelines H, drug involvement, and E, personal conduct, explaining why it was unable to find it clearly consistent with the national interest to grant security clearance eligibility. 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 Security Executive Agent Directive 4, effective June 8, 2017.

On August 18, 2017, Applicant answered the SOR, admitting subparagraphs 1.a and 1.b, and denying subparagraph 2.a. She requested a hearing, whereupon the case was assigned to me on May 10, 2018. On June 5, 2018, the Defense Office of Hearings

and Appeals issued a notice of hearing, scheduling Applicant's case for July 11, 2018. The hearing was held as scheduled. I received two Government exhibits (GE 1 and GE 2). The transcript (Tr.) was received on July 19, 2018.

Findings of Fact

Applicant is a 27-year-old single woman. She graduated from college in 2014, majoring in exercise science, and has been working for a defense contractor as an associate programmer since 2016. (Tr. 11) This is her first application for a security clearance.

Applicant used marijuana with varying degrees of frequency beginning in 2013 while in college to September 2017. (Answer at 1) At the hearing, she attributes her decision to begin smoking marijuana to peer pressure and her relationship with a "cruel and manipulative" boyfriend. (Tr. 15) She continued using it for three years after college because it helped her relax and helped increase her appetite. (GE 1 at 34)

Applicant disclosed her marijuana use on her security clearance application in May 2016, vowing not to use it again. Despite this pledge, she used it again during the period after completing the application and before her subject interview in September 2017. (Tr. 16) She disclosed this use to the investigator, and again promised not to use marijuana in the future. (GE 2) She has not used marijuana since September 2017. Applicant attributes her recurrence to her continued association with the "poisonous people" with whom she met in college. (Tr. 16) She has not associated with them since October 2017. (Tr. 16) She has no intention to use marijuana in the future.

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(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. 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.

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d).¹

Analysis

Guideline H: Drug Involvement

The security concerns about drug involvement 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.

Applicant’s history of marijuana use triggers the application of AG ¶ 25(a), “any substance misuse.” If Applicant’s marijuana use was limited to when she was in college, it could perhaps be attributed to youthful immaturity. However, Applicant’s marijuana use continued for three years after college, through September 2017, and most importantly, continued after she disclosed it on her security clearance application and promised to stop using it. Under these circumstances, she has not established a pattern of abstinence to apply any of the mitigating conditions.

Guideline E: Personal Conduct

Under this guideline, “conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about

¹ The factors under AG ¶ 2(a) 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 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.

an individual's reliability, trustworthiness, and ability to protect classified or sensitive information." Applicant's history of marijuana use is disqualifying under the personal conduct guideline for the same reasons it is disqualifying under the drug involvement guideline.

Whole-Person Concept

Given Applicant's history of marijuana use and its recency, it is too soon to conclude that she has mitigated the security concern.

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:	AGAINST APPLICANT
Subparagraphs 1.a – 1.b:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

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

Marc E. Curry
Administrative Judge