



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



In the matter of:)
)
) ISCR Case No. 18-00090
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

October 5, 2018

Decision

Lokey Anderson, Darlene D., Administrative Judge:

On May 14, 2017, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 1.) On March 1, 2018, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations; Guideline H, Drug Involvement and Substance Misuse, and Guideline E, Personal Conduct. The action was taken 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 *Adjudicative Guidelines*, effective within the DoD after June 8, 2018.

Applicant answered the SOR on May 17, 2018, and requested a hearing before an administrative judge. The case was assigned to me on July 25, 2018. The Defense Office of Hearings and Appeals issued a notice of hearing on July 26, 2018, and the hearing was convened as scheduled on August 28, 2018. The Government offered four exhibits, referred to as Government Exhibits 1 through 4, which were admitted without objection. The Applicant offered no exhibits but she testified on her own behalf. The

record remained open until close of business on September 11, 2018, to allow the Applicant the opportunity to submit additional supporting documentation. Applicant did not submit anything. DOHA received the transcript of the hearing (Tr.) on September 6, 2018.

Findings of Fact

Applicant is 25 years old. She has completed four years of college, but has no degree. She is employed by a defense contractor as a Control Center Specialist. She is seeking to obtain a security clearance in connection with her employment.

Guideline F - Financial Considerations

The Government alleged that Applicant is ineligible for a clearance because she made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about her reliability, trustworthiness, and ability to protect classified information.

The SOR identified eight delinquent student loan accounts totaling approximately \$30,000 showing a history of financial problems. Applicant admits each of the allegations set forth in the SOR under this guideline. She has been working for her current employer since January 2017, and has never held a security clearance before. The following student loans were outstanding:

1.a. A delinquent U.S. department of education student loan debt was placed for collection in the approximate amount of \$2,795.

1.b. A delinquent U.S department of education student loan debt was placed for collection in the approximate amount of \$2,270.

1.c. A delinquent U.S. department of education student loan debt was placed for collection in the approximate amount of \$2,229.

1.d. A delinquent U.S. department of education student loan debt was placed for collection in the approximate amount of \$2,635.

1.e. A delinquent U.S. department of education student loan debt was placed for collection in the approximate amount of \$5,914.

1.f. A delinquent U.S. department of education student loan debt was placed for collection in the approximate amount of \$5,864.

1.g. A delinquent U.S. department of education student loan debt was placed for collection in the approximate amount of \$3,687.

1.h. A delinquent U.S. department of education student loan debt was placed for collection in the approximate amount of \$4,797.

Applicant testified that she is now paying her student loans. She believes that they have been consolidated and based on upon her bills, she pays \$5 monthly toward her student loans. She states that since she began working for her current employer she has been making these payments. (Tr. pp. 20-21.)

Guideline H - Drug Involvement and Substance Misuse

The Government alleges that the Applicant has used controlled substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose, which can raise questions about an individual's reliability and trustworthiness.

Applicant has a history of marijuana use from 2010 to at least August 2018. She testified that she smoked marijuana a few times a week during this period. She has also purchased marijuana during this period. She estimates that she has smoked marijuana a total of more than 200 times, but not more than 500. On August 14, 2017, she was interviewed by a DoD investigator, and at that time she indicated that she intended to continue using marijuana in the future and at that same frequency. Applicant understands DoD policy and regulations that prohibit the use of illegal drugs. She also realizes that her company has a no drug policy as well as the fact that marijuana use is against Federal law. She stated, in part, ... "personally I don't see the harm." Applicant last used marijuana a few days before the hearing. (Tr. p. 23-24.)

Guideline E – Personal Conduct

Applicant completed an Electronic Questionnaire for Investigations Processing (e-OIP) dated May 14, 2017. (Government Exhibit 1.) In response to Section 23 concerning her illegal drug use, Applicant was asked if "in the past seven years, has she illegally used any drugs or controlled substances?" The Applicant answered, "NO." This was a false response. Applicant deliberately failed to disclose her marijuana use set forth under subparagraph 2(a) of the SOR.

In her answer to the SOR, Applicant admits the above mentioned allegation set forth under this guideline. She admitted that she was scared about how her marijuana use would affect her job and so she lied in response to the question on her security clearance application. She is remorseful about her deliberate falsification. (Tr.pp. 25-26.)

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 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 AG ¶ 2 describing 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 to classified information 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.

Directive ¶ E3.1.14, requires the Government to present evidence that establishes 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information seeks to enter 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.

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

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant remains excessively indebted to the creditors listed in the SOR. She has failed to demonstrate that she has done much to resolve her delinquent debts. The evidence is sufficient to raise the above disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns. I have considered each one of them below:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g. loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;

(f) the affluence resulted from a legal source of income; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

None of the mitigating conditions apply. Applicant states that she is paying her student loans, but has provided no documentary evidence that substantiates this. The record was left open for her to provide evidence of these payments and she failed to submit anything. She has failed to establish any meaningful track record of repayment. Moreover, Applicant has not demonstrated that future financial problems are unlikely. In fact, presently there are no indications, other than her testimony, that her student loans are being addressed in any fashion or are under control.

Guideline H: Drug Involvement and Substance Misuse

The security concern relating to the guideline for Drug Involvement and Substance Misuse is set forth at 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.

The guideline at AG ¶ 25 contains three conditions that could raise a security concern and may be disqualifying:

(a) any substance misuse (see above definition);

(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia, and

(g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

The guideline at AG ¶ 26 contains conditions that could mitigate security concerns. None of the mitigating conditions are applicable:

(a) the behavior 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; and

(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.

Despite DoD policy, Federal law, and her company policies that prohibit illegal drug use, Applicant plans to continue using marijuana in the future.

Guideline E - Personal Conduct

The security concern for the personal conduct guideline 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(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.

From the evidence provided, Applicant deliberately failed to disclose her use of marijuana on her security clearance application. The fact that she did not admit this use in response to questions on her security clearance application indicates behavior that shows questionable judgment, unreliability, and untrustworthiness.

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 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 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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline F, Guideline H, and Guideline E in my whole-person analysis. Applicant has failed to provide sufficient documentation to show proof of payment toward her delinquent student loans. She also continues to use marijuana despite the Federal law and DoD policy and she deliberately falsified her security clearance application concerning her illegal drug use. Applicant is young and naïve, and does not understand the importance of holding a security clearance, or the responsibilities that come with that privilege. She is not an individual with whom the Government can trust to be provided access to classified information, or that the information will be properly protected. Applicant has not demonstrated that she meets the qualifications for a security clearance.

Overall, the record evidence leaves me with many questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Financial Considerations, Drug Involvement and Substance Misuse, and Personal Conduct security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

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|---------------------------|-------------------|
| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraph 1.a: | Against Applicant |
| Subparagraph 1.b: | Against Applicant |
| Subparagraph 1.c: | Against Applicant |
| Subparagraph 1.d: | Against Applicant |
| Subparagraph 1.e: | Against Applicant |
| Subparagraph 1.f: | Against Applicant |
| Subparagraph 1.g: | Against Applicant |
| Subparagraph 1.h: | Against Applicant |
| Paragraph 2, Guideline H: | AGAINST APPLICANT |
| Subparagraph 2.a: | Against Applicant |
| Subparagraph 2.b: | Against Applicant |
| Subparagraph 2.c: | Against Applicant |
| Paragraph 3, Guideline E: | AGAINST APPLICANT |
| Subparagraph 3.a: | Against Applicant |
| Subparagraph 3.b: | Against Applicant |

Conclusion

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 national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge