



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



In the matter of:)
)
) ISCR Case No. 09-08472
)
)
Applicant for Security Clearance)

Appearances

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

November 4, 2010

Decision

DAM, Shari, Administrative Judge:

Applicant failed to rebut or mitigate the Government’s security concerns raised under Guideline H, Drug Involvement. Her eligibility for a security clearance is denied.

On September 4, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On March 30, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under the guideline for Drug Involvement. The action was 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 effective within the Department of Defense for SORs issued after September 1, 2006.

On April 26, 2010, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. On May 14, 2010,

Department Counsel prepared a File of Relevant Material (FORM), containing seven Items, and mailed her a complete copy on May 18, 2010. Applicant received the FORM on July 19, 2010, and had 30 days from its receipt to file objections and submit additional information. Applicant did not file a response. On October 12, 2010, DOHA assigned the case to me.

Findings of Fact

In her Answer, Applicant admitted the factual allegation contained in SOR ¶ 1.a. Her admission is incorporated into the findings herein.

Applicant is 55 years old and married. She has three children, ages 23, 22, and 19. In July 2009, she began a position as a software engineer for a defense contractor.

Applicant has a history of using marijuana, an illegal drug. In 1985, she used it with her husband to celebrate their anniversary while vacationing in a Caribbean country. From 2005 to July 2009, she used it two or three times a year with her husband at home. She has not sold or distributed it. She has not participated in substance abuse treatment or been diagnosed as having a drug abuse problem. She does not believe that she has a drug habit. Only her husband and brother are aware of her usage.

In her Answer, Applicant stated that she “will certainly never use it again.” (Item 4.) She apologized for wasting government resources on her case. (*Id.*)

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 (AG) 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 AG ¶ 2(a), describing the adjudicative process. The administrative judge’s overarching 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 “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.”

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “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.” Section 7 of Executive Order 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.”

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 an 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

Guideline H, Drug Involvement

The security concern pertaining to Drug Involvement is set out in AG ¶ 24:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. (a) Drugs are defined as mood and behavior altering substances, and include: (1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and; (2) inhalants and other similar substances; (b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

This guideline notes several conditions that could raise security concerns. Based on Applicant's admissions that she used marijuana in 1985, and then again occasionally for four years, the Government raised a disqualifying condition under AG ¶ 25(a), “any drug abuse (see above definition).”

After the Government raised a potential disqualifying condition, the burden shifted to Applicant to rebut and prove mitigation of the resulting security concerns. AG ¶ 26 includes examples of conditions that could mitigate the security concern arising from illegal drug use:

(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;

(b) a demonstrated intent not to abuse any drugs in the future, such as:

(1) disassociation from drug-using associates and contacts;

(2) changing or avoiding the environment where drugs were used;

(3) an appropriate period of abstinence; and,

(4) a signed statement of intent with automatic revocation of clearance for any violation;

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and

(d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

AG ¶ 25(a) does not apply because Applicant regularly used illegal drugs from 2005 to July 2009. Given the frequency and four-year history of marijuana use, her behavior casts doubt on her current trustworthiness and good judgment. Other than an assertion in her Answer that she did not intend to use it in the future, she failed to provide sufficient evidence to demonstrate her intention not use it in the future and warrant the application of AG ¶ 25(b). Applicant's uncorroborated statements that she has not used marijuana since July 2009 are not sufficient evidence to establish an appropriate period of abstinence in view of her years of use. The record does not contain evidence to support the application of AG ¶ 25(c). Applicant has not participated in substance abuse treatment, which is necessary to trigger the application of AG ¶ 25(d).

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(a):

(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.

According to 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 the facts and circumstances surrounding this case. Applicant is a 55-year-old married woman and mother of three young adult children, who illegally used marijuana over four years. She used it with her husband and her children are unaware of her conduct. She was candid about her mistake and seemingly remorseful about her illegal behavior. Nonetheless, her four-year usage, albeit periodically, raises concerns about her reliability, judgment, and ability to comply with rules and regulations. Overall, the record evidence leaves me with questions as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from her drug involvement.

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
Subparagraph 1.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 national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge