



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



In the matter of:)	
)	
)	ISCR Case No. 14-03471
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Benjamin Dorsey, Esq., Department Counsel
For Applicant: Matthew Estes, Esq.

09/17/2015

Decision

LYNCH, Noreen A, Administrative Judge:

On March 14, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline H (Drug Involvement), and Guideline E (Personal Conduct). The action was taken under Executive Order 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 (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. A notice of hearing was sent on July 31, 2015, scheduling the hearing for September 1, 2015. The Government submitted three exhibits (GX 1-3), which were admitted into the record. Applicant submitted three exhibits (A-C), which were admitted into the record. The transcript was received on September 10, 2015. Based on a review of the case file, submissions, and exhibits, I find Applicant failed to meet her burden regarding the security concerns raised. Security clearance is denied.

Findings of Fact

In her answer to the SOR, Applicant admitted the factual allegations under Guideline H (Drug Involvement), and denied the allegation under Guideline E (Personal Conduct).

Applicant is a 33-year-old Director of College Relations with a defense contractor. She received her undergraduate degree in 2004, and her Master's in 2009. (GX 1) She is married and has two children. She has worked in the defense field since 2004. She has worked for her current employer since 2012. She has held a security clearance since 2004. (Tr. 16) She completed her most recent security clearance application (SCA) on December 16, 2013.

Drug Involvement

Applicant used marijuana in July 2012 . During that time, she held a top secret security clearance. (GX 3) She admitted that while she was on vacation with her family, she took a hit of a marijuana joint that her brother passed around to the family. (Tr. 24) She acknowledged that they joked about whether they would smoke it and decided that they would. (Tr. 24) She states that she immediately regretted the action. She has not been around her brother recently and does not know if he still uses marijuana.

Applicant has never been arrested or had any other incidents with illegal drugs. Her husband does not use marijuana. She has not been around others since that time who use marijuana.

Applicant's employer has a drug policy. She has been given training on the responsibilities of holding a clearance. She has been tested for drug use, but has never tested positive. (Tr. 38) She stated that this was a momentary lapse in judgment. (Tr. 39)

Applicant submitted a letter of recommendation from her employer who has known her since 2014. He states that she is a highly successful member of the team. She is an honest person who acts with the utmost integrity. He trusts her to protect classified information. (AX B)

Applicant signed a Letter of Intent, dated February 13, 2015, stating that she has no intent to use illegal drugs in the future, and if should there be a violation with regard to illegal drug use, she would consent to an automatic revocation of her security clearance. (AX C)

Applicant also submitted a performance evaluation. (AX A) The evaluation report, dated March 2015, reflects her achievements in her work and rates her as "highly effective."

Personal Conduct

Applicant completed a security clearance application dated December 16, 2013. In response to Section 23, Illegal Use of Drugs or Drug Activity, Applicant answered “No,” to the question asking whether she had illegally used any drugs or controlled substances within the last seven years. She also answered “No” to the subsection asking if she had ever used illegal drugs while holding a security clearance. She omitted the information concerning the 2012 incident of marijuana use and the fact that she used illegal drugs while she held a security clearance in another section of the application. (GX 1) She did not disclose the above information about marijuana use because she thought about her daily life and life style and that marijuana was just not a part of it. She testified that it did not occur to her when she completed the SF-86. She further explained that when she was telling her husband that she would have an investigative interview the next day, he asked her whether she would tell them about the incident in July 2012. She claims that is when she realized that she should bring up the marijuana use in 2012. (Tr. 31)

Applicant stated that she told the investigator that she used marijuana in July 2012. She denies that she intentionally falsified her application. She stated that she volunteered the information to the investigator. (GX 2)

In her answer to the SOR, Applicant denied deliberately omitting information because she filled out the papers in about an hour. However, she understood the questions. (Tr. 43) She noted that had she read through the questionnaire more thoroughly, she may have remembered the incident. (Tr. 44).

Policies

When evaluating an applicant’s suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” An 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 access to classified information will be resolved in favor of 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The United States Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”¹ The burden of proof is something less than a preponderance of evidence.² The ultimate burden of persuasion is on the applicant.³

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

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.”⁴ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline H, Drug Involvement

AG ¶ 24 expresses the security concern pertaining to drug involvement:

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.

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

(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.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying:

(a) any drug abuse (see above definition);

(b) testing positive for illegal drug use;

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

(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence;

(e) evaluation of drug abuse or drug dependence by a licensed clinical social worker who, is a staff member of a recognized drug treatment program;

(f) failure to successfully complete a drug treatment program prescribed by a duly qualified medical professional;

(g) any illegal drug use after being granted a security clearance; and

(h) expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use.

Applicant admitted her use of illegal drugs (marijuana) in July 2012. She acknowledged that the use occurred at a family event and that her brother had passed around the marijuana joint. She held a security clearance at the time. AG¶ 25(a) and (g) apply.

AG ¶ 26 provides conditions that could mitigate security concerns:

(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;

Applicant's last use of marijuana was in 2012. She states that she has not used any illegal drugs since that time. She signed a letter of intent. She states that she regrets the use. Despite her intentions to not use marijuana, I find her judgment questionable as she held a security clearance since 2004. The incident is recent. She has not mitigated the security concerns under Guideline H.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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. Under AG ¶ 16(a), a disqualifying conditions exists when there is "deliberate omission, concealment, or falsification of relevant facts from any personnel questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security eligibility or trustworthiness, or award fiduciary responsibilities."

Applicant omitted the use of the marijuana in 2012 on her security clearance application in 2013. She deliberately misled the government by not including any information about her drug involvement in 2012 or the fact that he held a security clearance while doing so in 2012. She states that her husband asked her the night before her interview if she would disclose the July 2012 incident. It is not clear if he had not mentioned the marijuana incident, whether Applicant would have volunteered the information. I do not find her credible. Her behavior and personal conduct are disqualifying as they raise questions about her judgment, reliability, truthfulness, and willingness to comply with the law. AG 16(a) applies.

After considering the mitigating conditions outlined in AG ¶ 17, I conclude that none of them apply. Applicant did not make prompt or good-faith efforts to correct her falsification or concealment until the interview. She provided no information that indicates she was ill-advised. The incidents are too recent and serious to be mitigated by the passage of time. I have serious doubts about her good judgment and reliability. She has not provided information in this record to show that she has met her burden of proof to mitigate the personal conduct concern.

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 an applicant's conduct and all the 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.

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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 33 years old. She has held a security clearance since 2004. She has worked for for several companies in the defense field. She has excellent recommendations from her employer. They attest to her character and dedication to work. She submitted a performance evaluation. She has signed a Letter of Intent.

Applicant used marijuana in July 2012 with her family on vacation. She had a security clearance for a number of years. In addition, Applicant falsified her 2013 SCA by not disclosing the information about her 2012 marijuana use. She stated that she volunteered the information to the security investigator after discussing with her husband the evening before the interview. Applicant failed to submit sufficient information or evidence to mitigate the security concerns raised in his case. Applicant has not shown good judgment and honesty. She has disregarded the prohibition against marijuana use, including while holding a security clearance. Accordingly, Applicant has not mitigated the security concerns.

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
Subparagraphs 2.a-2.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 a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge