



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-06419

Appearances

For Government: Nichole A. Smith, Esquire, Department Counsel
For Applicant: *Pro se*

06/30/2016

Decision

HOWE, Philip S., Administrative Judge:

On April 29, 2014, Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP). On July 1, 2015, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H (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 (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on July 31, 2015, and requested an in person hearing. In an email on October 30, 2015, Applicant requested her case be decided on the written record in lieu of a hearing.

On November 19, 2015, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 to 4, was provided to the Applicant on November 19, 2015. She was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on November 30, 2015. Applicant did not file a Response to the FORM within the 30-day time allowed that would have expired on December 30, 2015.

Department Counsel submitted four Items in support of the SOR allegations. Item 4 is inadmissible. It will not be considered or cited as evidence in this case. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on June 24, 2014. Applicant did not adopt it as her own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of an authenticating witness. In light of Applicant's admissions, it is also cumulative.

I received the case assignment on April 22, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant admitted the allegations in Paragraph 1 of the SOR. (Items 1-3)

Applicant is 35 years old, never married, and has no children. She works for a defense contractor, and has since 2010. Before then she had a series of jobs involving different responsibilities. She has a college degree awarded in 2003. (Items 1-3)

Applicant's Answer admits that she used marijuana in social settings with her friends. Applicant admitted that she bought marijuana "in the past." She admitted in Section 23 of the e-QIP that she started using marijuana in September 2000 several times a year, at least, and stopped voluntarily in November 2013. That was five months before she completed her e-QIP in April 2014. At the time the SOR was issued it had been about two years since she last used marijuana. Applicant did not submit any objective documentation or statements by her friends or professional evaluators concerning her use of marijuana during the 13-year period of use. She did not submit any drug tests to show her current use or non-use of marijuana or any other illegal drug. Applicant's own statement discloses the use and the time period, but she does not offer any other information. (Items 1-3)

Applicant stated in her Answer that she answered the drug use questions honestly "because (she) did not want to lie or mislead anyone." She stated she decided to stop using marijuana in 2013 because "it was the right thing to do, not for fear I may lose my job." She used marijuana for three years while working for the defense contractor, but not while having a security clearance. She did not state anything about her future use of marijuana or whether she disassociated herself from her social friends who use marijuana. (Items 1-3)

Applicant provided no evidence concerning the quality of her job performance. She submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing.

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 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, the administrative judge applies 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(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 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.

According to Directive ¶ E3.1.14, the Government must 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."

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

Analysis

Guideline H, Drug Involvement

AG ¶ 24 expresses the security concern pertaining to illegal drugs:

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.

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

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

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

Applicant admits to 13 years of marijuana use in social settings with her friends. She also admitted she purchased marijuana for her use, thereby possessing it while she used it. AG ¶ 25 (a) and (c) are established.

AG ¶ 26 provides four 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;
- (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.

None of these mitigating conditions are established from the information provided by Applicant. Her marijuana use was sufficiently recent, frequent, and occurred in social settings that could easily occur again. Her 13-year history of illegal marijuana use cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 26 (a) is not established.

Applicant has not demonstrated intent not to use marijuana in the future. She did not state she no longer associates with her marijuana-smoking friends, that she changed the environment where drugs were used, or that she had an appropriate period of abstinence supported by objective evidence, nor did she submit a signed statement of intent with an automatic revocation of her clearance with any violation of the drug guideline. Therefore, AG ¶ 26 (b) is not established.

Applicant's marijuana use did not involve abuse of prescription drugs after a severe illness, nor did she complete a prescribed drug treatment program. AG ¶ 26 (c) and (d) are not applicable.

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.

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. Applicant was an adult when she started using marijuana and continued to use it. As an adult, she knew the use of illegal drugs was wrong. She used marijuana while working for the defense contractor even without a security clearance. After 13 years of continued and frequent use she decided to stop and admit her wrongful actions. However, she did not submit objective evidence to show she currently is not using marijuana, nor did she demonstrate any future commitment to never use marijuana again. While she displayed her honesty by disclosing the adverse information, said disclosure is insufficient to mitigate a long history of illegal drug abuse.

Overall, the record evidence leaves me with questions or substantial doubts 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 under the guideline for Drug Involvement.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a and 1.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 eligibility for a security clearance. Eligibility for access to classified information is denied.

PHILIP S. HOWE
Administrative Judge