



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



In the matter of:)
)
) ISCR Case No. 19-00529
)
Applicant for Security Clearance)

Appearances

For Government: Brittany White, Esq., Department Counsel
For Applicant: Dan Meyer, Esq.

03/03/2020

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the security concerns involving drug involvement and substance misuse and personal conduct. Continued eligibility for access to classified information is granted.

Statement of the Case

On March 11, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H (drug involvement and substance misuse) and Guideline E (personal conduct). The action was taken under Executive Order (Exec. Or.) 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 by DOD on June 8, 2017.

Applicant responded to the SOR on June 6, 2019, and requested a hearing before an administrative judge. The case was assigned to me on August 1, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing (NOH) on August 15,

2019, scheduling the hearing for August 26, 2019. Applicant waived the 15-day hearing notice requirement. I convened the hearing as scheduled. (Tr. at 5)

I admitted Government Exhibits (GE) 1 through 4 in evidence without objection. Applicant testified and did not call any witnesses. She submitted Applicant Exhibits (AE) A through E, which I admitted in evidence without objection. The record closed at the conclusion of the hearing. DOHA received the hearing transcript (Tr.) on September 4, 2019.

Findings of Fact

Applicant admitted all of the allegations in her response to the SOR (Answer). She is 28 years old, single, and does not have any children. (Answer; GE 1; AE B)

Applicant graduated from high school in 2010. She obtained a bachelor's and a master's degree in chemical engineering in 2015 and 2019, respectively. She worked as a college intern for a DOD contractor during the summers of 2013 and 2014. She obtained full-time employment as an engineer for the same DOD contractor in June 2015. She initially worked in one division until January 2017, then transferred to the division in which she worked as of the date of the hearing. She was granted a DOD security clearance in 2013. (Tr. at 6, 15-16, 19-20, 24, 27, 29-30, 32-33, 54-55; GE 1, 4; AE C, D)

Applicant used marijuana from approximately January 2008 to June 2015 (SOR ¶ 1.a). She first used marijuana, on one occasion, in high school. The majority of her marijuana use occurred in college, with her then long-term college boyfriend. She acknowledged there were a few occasions when she used marijuana on her own, to relax while studying or going to sleep. She estimated that she used marijuana "once or twice a month with long periods where I actually just didn't do it." The individuals with whom she used marijuana provided it, but there were occasions in which she contributed money towards its purchase. (Tr. at 18-26, 28-31, 33-39, 46-47, 50-52; GE 1-4; AE C, D)

Applicant stopped using marijuana by the time she completed her June 2013 SCA, which was during "finals week" of her third year in college. She did not use marijuana during the duration of her summer internships in 2013 and 2014. She resumed using marijuana when she returned to college after completing both internships, and she also used marijuana once or twice after her March 2015 graduation. She held a clearance during this period, having been granted one in 2013 (SOR ¶ 1.d). She testified that she regretted doing so, but she was not thinking long-term. She has not used marijuana since she began working full time in June 2015. (Tr. at 18-26, 28-31, 33-40, 46-47, 50-56; GE 1-4; AE C, D)

Applicant used ecstasy and cocaine from approximately April 2011 to July 2016 (SOR ¶¶ 1.b, 1.c). She first used ecstasy during her first year in college, while at a concert with her college roommate. All of her ecstasy use occurred while attending concerts. She also first used cocaine during her first year in college, while at a fraternity party with her college roommate. She used cocaine occasionally throughout college, while attending concerts with friends. The individuals with whom she used ecstasy and cocaine provided

them, and there were occasions in which she contributed money towards their purchase. She used both ecstasy and cocaine twice after graduation; she last used ecstasy in January 2016; and she last used cocaine in July 2016. She held a clearance during this period (SOR ¶1.d). She decided in 2016 that she never wanted to use ecstasy or cocaine again. (Tr. at 18-26, 28-31, 33-40, 46-47, 50-56; GE 1-4; AE C, D)

Applicant reiterated that she regretted using marijuana, ecstasy, and cocaine after her college graduation. She testified that though she was working full time, she did not contemplate the long-term implications of using drugs while working for her employer and holding a security clearance. She first came to understand such implications in 2017, when she transferred to the division in which she worked as of the date of the hearing and underwent the security clearance process again for continued access to classified information, as further discussed below. (Tr. at 18-26, 28-31, 33-40, 46-47, 50-56; GE 1-4; AE C)

Applicant misused the prescription medication Adderall, not prescribed to her, after she purchased it from friends between April and October 2011; and she misused her prescribed Adderall when she gifted or sold it to friends between December 2011 and June 2013 (SOR ¶¶ 1.e, 1.f). She first used Adderall in April 2011, prior to receiving a prescription for it. She was struggling in school and a friend who was prescribed it offered it to her as a study aid. She found that it helped her study so she used it several more times. She also purchased it for her personal use two to three times between the spring and fall of 2011. (Tr. at 18-26, 28-31, 33-40, 57-58; GE 1-4; AE C)

In the fall of 2011, Applicant sought counseling to explore the possibility of receiving her own Adderall prescription; she received such a prescription when she was diagnosed with attention deficit hyperactivity disorder. She used her prescribed Adderall throughout college. She also gifted and sold some of her Adderall pills to several friends during the week of college exams. She stated in her 2017 security clearance application (SCA) and during her 2018 background interview that she had no intent to sell her prescription Adderall again in the future. She briefly stopped usage of her prescribed Adderall after graduation, and she resumed usage from 2016 to June 2019 while pursuing her master's degree. Though it helped with her learning disability, she testified that she had no intention of taking it again because she did not want to have to take a drug "for the rest of my life." (Tr. at 18-26, 28-31, 33-40, 57-58; GE 1-4; AE C, D)

Applicant was aware of her employer's policy against illegal drug use. She successfully completed drug tests in conjunction with her internships in the summers of 2013 and 2014, her full-time employment in 2015, and her 2017 transfer to the division in which she worked as of the date of the hearing. She was subject to random drug testing, but she had not been drug tested since 2016. In June 2019, she signed a statement of intent not to illegally use any drugs in the future and that any violation constituted grounds for revocation of her clearance. In April 2019, she was assessed by a psychiatrist and determined to not be drug dependent. (Tr. at 18-33, 38-46, 50-55, 57, 59; AE C, D, E)

Applicant testified that she has matured and her priorities have changed. She testified that she socializes primarily with her coworkers "because of our similar values."

She no longer associated with the individuals with whom she had previously used drugs, to include her college roommate as well as her then long-term boyfriend. She testified that she terminated her relationship with her boyfriend in April 2019 because he continued to behave like an “adolescent teenager and I wanted to be an adult, and he wasn’t getting there with me.” Since 2016, she has been in several situations where drugs were being used, and she chose to leave and go home. She was remorseful about her past drug use. She testified that she understood the severity of her actions, she had no intention of repeating the mistakes of her adolescence, and she did not intend to jeopardize her job by using illegal drugs or misusing legal drugs. (Tr. at 18-33, 38-46, 50-57, 59-60; AE C, D, E)

Applicant first completed an SCA in June 2013. She marked “No” and failed to disclose information regarding her drug use, as discussed above in SOR ¶¶ 1.a to 1.f, in response to section 23. Section 23 inquired whether she had, in the past seven years: (1) illegally used any drugs or controlled substances, or (2) intentionally engaged in the misuse of prescription drugs, regardless of whether or not the drugs were prescribed to her or someone else (SOR ¶¶ 2.a, 2.b). Applicant testified that when she completed her 2013 SCA during “finals week” of her third year in college, she was “really stressed out.” She had not yet begun her summer internship. She testified that the SCA was included with her onboarding paperwork, and she did not truly understand the nature of the SCA or the security clearance process. She testified that she confused the SCA with her onboarding paperwork, stating:

I didn’t really honestly know the difference between my onboarding paperwork and the [SCA]. It kind of seemed like all one bundle of things that I had to do just to get an internship. So, I did receive [the SCA] at that time back in June or late May of 2013. But I can’t really say that I recognized [the onboarding paperwork and the SCA] were two separate entities.

(Tr. at 26-28, 31-33, 35, 37, 47-50, 55-56, 61; GE 2; AE C).

Applicant could not recall meeting with a facility security officer (FSO), but rather worked on the SCA through an individual from human resources (HR) “who, frankly, rushed me through the process.” She recalled this individual warning her that her internship would be jeopardized if she did not promptly complete the SCA. She testified that she thought that she would not get the internship if she answered “Yes” to the relevant drug questions, and she did not understand that her ability to obtain a security clearance would be impacted. She testified that she lacked the resources to better understand that she would not be punished if she told the truth. She also sought the guidance of her father, an attorney, and followed his advice to mark “No” in response to section 23. She ultimately chose to not jeopardize her internship. (Tr. at 26-28, 31-33, 35, 37, 47-50, 55-56, 61; GE 2; AE C, D)

Applicant self-reported information about her past drug use to her FSO in January 2017, when she transferred to the division in which she worked as of the date of the hearing. In turn, her FSO completed an incident history report, as required, on the Joint Personnel Adjudication System (JPAS) database. Applicant also disclosed her past drug

use information on her March 2017 SCA. She also disclosed her past drug use to her managers and coworkers. She testified that she made a mistake in not disclosing such information on her 2013 SCA, and she was “trying to own up to it and trying to correct it.” She acknowledged that fear kept her from disclosing her drug use sooner. As previously discussed, she reiterated that when she underwent the security clearance process again in 2017 for continued access to classified information, she truly understood the implications of her past drug use and her failure to disclose such drug use on her 2013 SCA. It was then, that she “knew exactly what it was that . . . was a potential for somebody to blackmail me” She was remorseful about her failure to disclose her drug use on her 2013 SCA. (Tr. at 16-18, 21, 55-56, 59; GE 1, 4; AE C).

Applicant testified that she loves her job and “really just dove in into my career since college.” Her employer rated her performance as “exceeded” expectations in 2015 and “significantly exceeded” expectations from 2016 to 2018. She is involved with various professional societies devoted to promoting careers in science, technology, engineering, and math among young adults. She also enjoys spending time outdoors, exercising, and cooking. Numerous character references, to include her manager from 2018 to 2019, coworkers, and friends, describe her as a responsible, honest, and trustworthy individual. (Tr. at 18-33, 38-46, 50-57, 59-60; AE C, D, E)

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 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 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 will be resolved in favor of the national security.”

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable security 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 safeguard 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 Exec. Or. 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline H, Drug Involvement and Substance Misuse

The security concern for drug involvement and substance misuse is set out 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. *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 notes several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable in this case:

- (a) any substance misuse (see above definition); and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant used marijuana from 2008 to 2015, and ecstasy and cocaine from 2011 to 2016. She used marijuana, ecstasy, and cocaine after she was granted a clearance in 2013. She also misused prescription Adderall not prescribed to her in 2011, and her prescribed Adderall between 2011 and 2013. AG ¶¶ 25(a) and 25(f) are established.

Conditions that could mitigate the drug involvement and substance misuse security concerns are provided under AG ¶ 26. The following are potentially 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;

Applicant has taken responsibility for her past drug use, to include such drug use that occurred while holding a clearance. She was remorseful and understood the severity of her actions. She has not misused a prescription drug since 2013 and she has not used illegal drugs since 2016. She disassociated herself from the individuals with whom she previously used illegal drugs or misused legal drugs, to include her then long-term boyfriend as well as her college roommate. She has also changed her social environment. The several instances in which she found herself in a setting where drugs were being used, she chose to leave. She also provided a signed statement of intent in June 2019. I find that AG ¶¶ 26(a), 26(b)(1), 26(b)(2), and 26(b)(3) are applicable.

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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . .

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

(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 national security eligibility or trustworthiness, or award fiduciary responsibilities; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing

Applicant displayed untrustworthiness, questionable judgment, and unreliability when she chose not to list her relevant misuse of a legal drug and use of illegal drugs, to include her drug use after she was granted a clearance in 2013, on her 2013 SCA. AG ¶¶ 16(a) and 16(e)(1) are established.

I have considered all of the mitigating conditions under ¶ AG 17 and considered the following relevant:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant self-reported information about her past drug use to her FSO in January 2017 and on her March 2017 SCA. She also disclosed her past drug use to her family, friends, managers and coworkers. She made such disclosures because she understood the implications of her past drug use and her failure to disclose such drug use on her 2013 SCA. She was remorseful and understood the severity of failing to properly disclose her drug use on her 2013 SCA. I find that ¶¶ AG 17(a), 17(c), 17(d), and 17(e) are established.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines H and E in my whole-person analysis. Applicant was credible, candid, and remorseful at her hearing. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the security concerns involving personal conduct and drug involvement and substance misuse.

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: Subparagraphs 1.a - 1.F:	FOR APPLICANT For Applicant
Paragraph 2, Guideline E: Subparagraphs 2.a - 2.b:	FOR APPLICANT For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant's continued eligibility for a security clearance. Continued eligibility for access to classified information is granted.

Candace Le'i Garcia
Administrative Judge