



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-07842
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: John B. Glendon, Esq., Department Counsel
For Applicant: John F. Mardula, Esq.

March 13, 2008

Decision

CURRY, Marc E., Administrative Judge:

On, September 28, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guidelines H and E. 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on October 16, 2007, and requested a hearing. The case was assigned to me on December 3, 2007. DOHA issued a notice of hearing on January 14, 2008 scheduling it for February 5, 2008. The hearing was held as scheduled. During the hearing, I received three government exhibits, two Applicant exhibits, one joint exhibit, and the testimony of three Applicant witnesses. At the hearing's close, the record was left open at Applicant's request to allow her to submit an additional exhibit. She did so within the allotted time, and I incorporated it into the

record. DOHA received the hearing transcript (Tr.) on February 13, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant admitted all of the SOR allegations except subparagraphs 2. b. She is a 43-year-old married woman with two children, ages 13 and 10, and an adult stepson. She earned a bachelor of science degree in mechanical design technology in 1992, and in 2001, she began working toward a master's degree in the same field. She is six credits short of completion.

Since graduating from college, Applicant has worked for several defense contractors, and has continuously held a security clearance. (Tr. 42, Exhibit 1 at 29). She has been working with her current employer since 2002 and is highly respected on the job. A supervisor from a former job characterized her as a meticulous and top-notch engineer (Tr. 20, 23). According to the division chief of her current company, their customers have been very impressed with her work (Tr. 31).

Between 1979 and 1990, Applicant smoked marijuana four times. The first time was in junior high school, the next two times were in college in the late 1980's, and the fourth time was in 1990 (Exhibit 2 at 4).

Applicant did not use marijuana between 1990 and 1998 (Tr. 108). In December 1998, her mother died. Her corresponding grief combined with the stress of managing her home while working at a job with a 160-mile per day commute, rendered her unable to sleep (Tr. 47, 103, 111, Exhibit A). Applicant then resumed marijuana use, smoking it two to three times per week to help her sleep (Tr. 54). During some of these occasions, she purchased it. When asked at the hearing if she considered prescription medication for her sleeping problem, she replied, ". . . my husband takes about seven pills and I didn't want to take pills . . ." (Tr. 115).

Between January 1999 and July 2001, Applicant treated with various counselors for grief counseling and stress management. From January to March 1999, she treated with a counselor through a program her employer offered (Tr. 55). Approximately a year later, she treated with a "regression therapist" for approximately two months (Tr. 55, 60 Exhibit A). It is unclear from the record what the field of regression therapy entails.

Between June and July 2001, Applicant treated with a psychotherapist (Exhibit C). She was diagnosed with, among other things, marijuana addiction. Applicant was sincerely committed to controlling her addictive behaviors during the treatment (*Id.*).

After the 2001 counseling ended, Applicant used marijuana on two more occasions; once during a January 2002 party, and once on a Saturday afternoon in 2005. During the last incident, she was house-sitting for a friend when she discovered a

discarded marijuana cigarette in an ashtray and decided, out of curiosity, to smoke it (Tr. 107, Exhibit 3 at 2).

Currently, Applicant neither smokes marijuana nor intends to smoke it in the future (Tr. 104, Exhibit B). She no longer associates with anyone who smokes marijuana (Tr. 105).

In November 2006, Applicant completed a security clearance application. In response to the question of whether she had used illegal drugs within the past seven years, she answered “Yes,” and specified the number of times she used it, the time periods, and the surrounding circumstances (Exhibit 1 at 29). She used the “Additional Comments” section to elaborate upon information about her marijuana use that was not specifically requested elsewhere in the application (*Id.* at 29). She answered “No” to Question 24b. (*Have you ever illegally used a controlled substance while employed as a law enforcement officer, prosecutor, or courtroom official, while possessing a security clearance; or while in a position directly and immediately affecting the public safety?*).

Policies

When evaluating an applicant’s suitability for a security clearance, the Administrative Judge must consider the revised 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole person concept.”

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. 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 applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

Analysis

Guideline H, Drug Involvement

Under this guideline, “use of an illegal 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” (AG ¶ 24). Applicant smoked marijuana between 1979 and 1990, resumed it in the late 1990s at a time when she possessed a security clearance, and used it twice after attending counseling in 2001. She purchased it on some occasions. AG ¶ 25(a), “any drug abuse,” AG ¶ 25(c), “illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution . . .,” AG ¶ 25(d), “diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence,” and AG ¶ 25(g), “any illegal drug use after being granted a clearance” apply.

Applicant’s disassociation from drug-using associates, and submission of a statement of intent not to abuse any drugs in the future trigger the application of AG ¶ 26(b)(1), “a demonstrated intent not to abuse any drugs in the future, such as [a] disassociation from drug-using associates and contacts,” and AG ¶ 26(b)(4) “a signed statement of intent [not to use illegal drugs] with automatic revocation of clearance for any violation.

I am not persuaded Applicant has mitigated the drug involvement security concern. The period of heaviest usage occurred between 1999 and 2002 when she was in her mid-thirties. Although she attributes this use to grief and anxiety related to her mother’s death; the last use during this period, in January 2002, occurred at a party. Moreover, she used marijuana on two occasions after receiving counseling for marijuana addiction. I was particularly troubled by the circumstances surrounding the second, post-counseling marijuana usage.

Applicant deserves credit for remaining drug-free for the past two and a half years. This period of abstinence, however, is outweighed by the length of time of her past marijuana use, her age during the heaviest use, her use while holding a clearance, and her recurrence after receiving counseling. Applicant failed to mitigate the drug involvement security concern.

Guideline E, Personal Conduct

Under this guideline, “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” (AG ¶ 15). Here, the government alleges Applicant lied to an investigative agent in 1993 when she said that her last use was in October 1990 (SOR subparagraph 2.a.), and falsified a 2006 security clearance application by answering “No” to Question 24b (SOR subparagraph 2.b).

There is no record evidence that Applicant used drugs between October 1990 and October 1993 when the agent interviewed her. Consequently, the government failed to prove any falsification occurred.

Applicant asserts that she misread Question 24b. and thought she was only supposed to answer “Yes” if she used marijuana while employed as a law enforcement

officer, prosecutor, or courtroom official. Given her comprehensive responses to the other questions about drug use, I conclude her explanation was credible. None of the personal conduct disqualifying conditions apply.

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 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) 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."

I addressed these factors at the conclusion of the Drug Involvement section of the decision. Applicant has not mitigated the drug involvement security concern.

Formal Findings

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a - 1.c:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a - 2.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MARC E. CURRY
Administrative Judge