



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS and APPEALS**



In the matter of:)
)
) ISCR Case No. 14-04654
)
Applicant for Security Clearance)

Appearances

For Government: Caroline Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

03/23/2015

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny her eligibility for a security clearance to work in the defense industry. In 2009, Applicant used cocaine. She has mitigated the illegal drug security concerns. Clearance is granted.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on November 6, 2014, the DoD issued a Statement of Reasons (SOR) detailing security concerns. DoD adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance. On November 19, 2014, Applicant answered

¹ 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) effective within the DoD on September 1, 2006.

the SOR and requested a hearing. On January 28, 2015, I was assigned the case. On February 28, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the hearing convened on February 11, 2015. I admitted Government's Exhibits (Ex) 1 through 3, without objection. Applicant testified at the hearing as did her spouse. On February 20, 2015, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, she admitted using cocaine in September and October 2009. Her admissions are incorporated herein. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 51-year-old aircraft mechanic who has worked for a defense contractor since August 2010, and seeks to obtain a security clearance. She currently has confidential-level access. Applicant produced no work or character references.

From July 1981 through July 1985, Applicant honorably served in the U.S. Navy. At time of discharge, she was an E-4. (Tr. 17) From 1985 until 1999, she was employed by a DoD contractor working on aircraft at the same location where she had been stationed in the Navy and where she now works. (Tr. 18) She was away from the base for ten years when laid off from her DoD contractor's job. (Tr. 18) From July 1999 through November 2009, Applicant worked at an oil refinery. In November 2009, she was fired when she failed a random hair follicle drug test. (Ex. 1, 3, Tr. 14, 27) She has not used illegal drugs since leaving the refinery. (Tr. 26) She listed her illegal drug usage on her January 2014 Electronic Questionnaires for Investigations Processing (e-QIP). (Ex. 1)

Applicant was questioned about her drug use during a February 2014 Enhanced Subject Interview. (Ex. 3) At that time, she indicated she had used cocaine on two occasions in 2009. (Ex. 3, Tr. 20) She indicated, at the time of her use, she was socializing with the wrong crowd and used the drug to fit in. She used it at a party with coworkers from the refinery. (Tr. 21) She no longer socializes with these people and has not seen them since she left the refinery in 2009. (Ex. 3)

Applicant acknowledged it was "stupid" for her to use cocaine, and stated she:

was hanging around with the wrong people, different place, different time. I didn't like where I was at that time. I was working – I didn't like my job; I didn't like what [I] was doing. I was hanging around with the wrong people. And, you know, it's something that's never going to happen again. (Tr. 21-22)

At the refinery, Applicant would work seven days on day shift and then seven days on night shift. She would work three or four months without a day off. (Tr. 24) Applicant loves her job now doing what she did when she was in the Navy. (Tr. 22) She

is working with old friends at the base. (Tr. 24) She married a few months before the hearing, having been together 17 years. (Tr. 32) Three or four year ago they purchased their home after renting the home for years. They volunteer at an animal rescue and adopted a class of special-needs children. (Tr. 23) She also volunteers welcoming veterans back home. (Tr. 24)

Applicant is subject to random drug testing at her current job. (Tr. 28) Her last urinalysis occurred six month ago, which was related to safety at the job site. (Tr. 28) She no longer associates with individuals using illegal drugs. (Tr. 31) She does not hang out with negative people, and her home is a clean, drug-free environment. (Tr. 33)

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 must be considered 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. 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 interests of 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.

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 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 Executive Order (EO) 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.” See *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Drug Involvement

AG ¶ 24 expresses the security concern pertaining to drug involvement in that the 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.

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

- (a) any drug abuse; and
- (b) testing positive for illegal drug use.

In 2009, Applicant's use of cocaine was discovered by a positive drug test. AG ¶ 25(a) and AG ¶ 25(b) apply.

AG ¶ 26 sets forth 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; and
 - (3) an appropriate period of abstinence.

There are no “bright line” rules for determining when conduct is “recent.” The determination must be based “on a careful evaluation of the totality of the record within the parameters set by the directive.” ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4,

2004). For example, the Appeal Board determined in ISCR Case No. 98-0608 (App. Bd. Aug. 28, 1997), that an applicant's last use of marijuana occurring approximately 17 months before the hearing was not recent. If the evidence shows "a significant period of time has passed without any evidence of misconduct," then an administrative judge must determine whether that period of time demonstrates "changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation."²

AG ¶ 26(b) lists ways Applicant can demonstrate her intent not to abuse illegal drugs in the future. She has disassociated from her drug-using associates and contacts. She does not routinely return to locations where she abused illegal drugs, and has changed or avoided the environment where drugs were used. She has changed her life, and has not routinely associated with the drug-abusing coworkers from her past. She has abstained from drug abuse for more than five years. AG ¶ 26(b) applies.

In conclusion, Applicant ended her drug abuse in October 2009. The motivations to stop using drugs are evident.³ She understands the adverse results from drug abuse. She has shown or demonstrated a sufficient track record of no drug abuse to eliminate drug involvement as a bar to her access to classified information.

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.

² ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). In ISCR Case No. 04-09239 at 5 (App. Bd. Dec. 20, 2006), the Appeal Board reversed the judge's decision denying a clearance, focusing on the absence of drug use for five years prior to the hearing. The Appeal Board determined that the judge excessively emphasized the drug use while holding a security clearance, and the 20 plus years of drug use, and gave too little weight to lifestyle changes and therapy.

³ Retention of a security clearance, potential criminal liability for possession of drugs and adverse health, employment, and personal effects resulting from drug use are among the strong motivations for remaining drug free.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. There is considerable evidence supporting approval of her clearance. Applicant revealed her drug abuse on her January 2014 security clearance application, to an Office of Personnel Management (OPM) investigator in February 2014, and at her hearing. Applicant used illegal drugs twice in 2009. She does not associate with the drug-using coworkers from her previous job. Now that she has a job she really enjoys and treasures, the consequences of drug abuse will be much more severe. She stopped using illegal drugs more than five years ago. She knows the consequences if she resumes her drug usage. There is no evidence at her current employment of any disciplinary problems. There is no evidence of disloyalty or that she would intentionally violate national security. Her civil involvement shows responsibility, rehabilitation and mitigation. I am satisfied that her current judgment, reliability, trustworthiness, and her current ability or willingness to comply with laws, rules and regulations show solid potential for access to classified information.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her previous illegal drug usage.

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, Drug Involvement: FOR APPLICANT

Subparagraphs 1.a – 1.b: 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 a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge