



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



In the matter of:)	
)	
)	ISCR Case No. 14-04730
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

02/23/2016

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to revoke her eligibility for a security clearance to work in the defense industry. Applicant mitigated the security concerns related to her history of occasional and casual marijuana use between 2002 and 2012. She has observed a two-year period of abstinence and has demonstrated intent to abstain from use of illegal drugs in the future. Clearance is granted.

Statement of the Case

On February 6, 2015, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the drug involvement guideline.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant’s security clearance.

¹ This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

Applicant answered the SOR and requested a decision without a hearing.² The Government submitted its written case on July 15, 2015. Applicant received a complete copy of the file of relevant material (FORM) and the Directive was provided to Applicant on July 31, 2015. She did not respond. The documents appended to the FORM are admitted as Government's Exhibits (GE) 1 through 4, without objection. The case was assigned to me on October 8, 2015.

Procedural Matters

SOR ¶ 1.c alleges that "[Applicant] expressed an intent [sic] to use marijuana in the future if the drug is ruled constitutionally and federally legal." Not only does the allegation mischaracterize Applicant's statements on the issue of future intent, it does not allege disqualifying conduct. As a result, this allegation is resolved in Applicant's favor.

Findings of Fact

Applicant, 36, has worked for a federal contractor since January 2014. On her security clearance application, submitted in March 2015, Applicant disclosed eight uses of marijuana use between June 2002 and 2012. She has described her marijuana use as experimental. Some of her drug use occurred with her boyfriend who gave the drug to her. On the occasions of her use, Applicant was not employed as a federal contractor or in any other position directly or immediately affecting public safety. Applicant also disclosed in August 2011 that she received marijuana edibles in the mail. Applicant's boyfriend suffers from a chronic medical condition and legally used marijuana under the terms of a medical marijuana license he obtained in State A. According to Applicant, her boyfriend sent a package containing his medical marijuana to her in State B, a state that does not permit medical marijuana, in advance of his move to join her. He did so without her knowledge and she did not learn of the package's contents until she opened it. In her subject interview, Applicant told the investigator that her boyfriend has never purchased marijuana illegally and he has no plans to do so in the future.³

Applicant has not used marijuana since 2012. On her security clearance application, Applicant indicated intent not to use illegal drugs in the future, stating, "Unless the drug is ruled constitutionally and federally legal (as with alcohol), I do not intend to use this drug. I want to ensure that I am fully compliant as I move towards clearance." She clarified this statement in her answer to the SOR, ". . . [I]f the drug was . . . legalized, I would consider use again. . . . I would like it to be known that if these legalizations occur, I do not intend to use it if my workplace or state has stricter regulations."⁴

² GE 2.

³ GE 3-4.

⁴ GE 2-3.

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 used in evaluating an Applicant's eligibility for access to classified information.

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

Analysis

Use of an illegal drug raises concerns about a person's ability or willingness to comply with laws, rules, and regulations.⁵ Applicant admitted disqualifying conduct under the drug involvement guideline; specifically, using marijuana on eight occasions between 2002 and 2012 and possession of marijuana after her boyfriend sent a package containing the drug to her home in 2011.⁶

However, the record does contain information to mitigate the security concerns raised by Applicant's past drug involvement. The 2011 incident where Applicant unexpectedly received a package of marijuana in the mail is mitigated as a one-time

⁵ AG ¶ 24.

⁶ AG ¶ 25(a) and (c).

event that does not negatively reflect her current security worthiness.⁷ Applicant has not used the drug since 2012, establishing an appropriate period of abstinence from her casual use of marijuana. The circumstances of her use are not indicative of an ongoing issue and occurred well before her employment as a federal contractor. Furthermore, she has clearly stated intent not to use drugs illegally in violation of federal law, her responsibilities as a clearance holder, or her employer's policies.⁸

As an argument against mitigation, the Government posits that Applicant's ongoing relationship with her boyfriend increases the likelihood that she will use marijuana again despite her statements to contrary. The Government's argument is speculative. Applicant's boyfriend possessed and used marijuana under the terms of a medical marijuana license in another state. There is no indication in the record that he is continuing to use, acquire, or possess the drug now that he and Applicant are living in a state that does not permit such usage. Accordingly, there is no evidence in the record to diminish the credibility of Applicant's statements of future intent. Her past use of marijuana is mitigated.

Based on the record, I have no doubts about Applicant's judgment and trustworthiness. I have also considered the whole-person factors at AG ¶ 2. Applicant truthfully and candidly disclosed her past marijuana use. Her ability to provide full, frank, and candid answers is an indication that she understands the gravity of the fiduciary relationship she seeks to enter into with the Government. Her statements regarding her future intentions to abstain from illegal drug use also demonstrate that she understands the restrictions on personal behaviors attendant to the privilege of having access to classified information.

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.c:	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 eligibility for a security clearance. Clearance is granted.

Nichole L. Noel
Administrative Judge

⁷ AG ¶ 26(a).

⁸ AG ¶ 26(b).