



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



In the matter of:)
)
) ISCR Case No. 23-02234
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: Bradley P. Moss, Esq.

04/18/2025

Decision

COACHER, Robert E., Administrative Judge:

The security concerns under Guideline H, drug involvement and substance misuse, were not established or were mitigated, and the security concern under Guideline E, personal conduct was not established. Applicant's eligibility for a security clearance is granted.

History of the Case

On March 11, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines H and E. The DCSA acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on March 18, 2024, and she requested a hearing. The case was assigned to me on October 10, 2024. After coordinating with counsel, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January

15, 2025, and the hearing was held as scheduled on February 14, 2025. The Government offered exhibits (GE) 1 through 3, which were admitted into evidence without objection. The Government's exhibit list and pre-hearing discovery letter were marked as hearing exhibits (HE) I and II. Applicant testified, called three witnesses, and offered exhibits (AE) A through D, which were admitted into evidence without objection. Her witness and exhibit list was marked as HE III. DOHA received the hearing transcript (Tr.) on February 28, 2025.

Findings of Fact

Applicant admitted the allegation in SOR ¶ 1.a and she denied the allegations in SOR ¶¶ 1.b and 2.a. Her admission is adopted as a finding of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 38 years old. In 2009, she earned an associate degree in computer networking and has earned numerous information technology (IT) certifications. She is single, never married, and has no children. She has worked for her current employer since September 2022. She currently is an accounts executive. She completed her security clearance application (SCA) on September 27, 2022. This was her first time applying for a security clearance, or a position of public trust. She was granted an interim security clearance on October 6, 2022. (Tr. 60, 62, 70-71, 85; GE 1, 3)

Under Guideline H, the SOR alleged Applicant used marijuana, with varying frequency, from about 2000 to about December 2022 (SOR ¶ 1.a); and that she used marijuana from about October 2022 to December 2022, while granted access to classified information. (SOR ¶ 1.b)

Under Guideline E, the SOR alleged Applicant falsified her September 27, 2022 SCA when she failed to disclose her marijuana use as described above. (SOR ¶ 2.a)

During Applicant's testimony, she admitted that she started experimenting with marijuana in approximately 2000, when she was 13 years old. She also experimented with Adderall and methamphetamine. By 2005, she stopped using all these drugs. In approximately 2013, she went on vacation to a state where marijuana was legal for recreational use. She and two friends bought a "joint" at a legal dispensary and shared smoking it. She used marijuana again, under similar circumstances when she visited the same state with friends and legally purchased marijuana, which she shared with her friends. (Tr. 65-67)

Between 2015 and August 2022, Applicant stated that she used marijuana infrequently, and only when she traveled to a state where its use was legal under state law. She claimed she never traveled to these states for the specific purpose of using marijuana. She happened to be in these states for work. She estimated her frequency of use during this time was once a month and primarily to relax before going to bed at night.

In her amended SOR answer (AE A) and her hearing testimony, she claimed she ceased using marijuana in August 2022, at the time she was interviewing for a job with her current employer. She has never used it again since then. (Tr. 66-68; AE A)

Applicant had given different answers as to when she ceased using marijuana earlier in the investigative process. During her December 19, 2022 background interview (BI) with an investigator, she stated that her **current** marijuana use encompassed, once-a-month or bi-monthly use over the past five years. A specific end date was not stated. During a subsequent BI interview on January 12, 2023, Applicant told the investigator that from approximately 2015 to the **present** she used marijuana about once-a-month, but only in states where it was legal. She stated that these answers were accurate when she was given a chance to review her interview summaries on December 7, 2023. In her original SOR answer, she admitted that her marijuana use encompassed, “2000-autumn 2022.” In her answers to Government interrogatories in December 2023, she stated, “I stopped using THC a month or two prior to the DSCA interview (12/8/22).” The date reference is the incorrect date of her first BI, which actually took place on December 19, 2022. (GE 2 (pp. 5, 12, 19, 26; AE A; SOR answer)

Applicant’s explanation for these discrepancies as to when she stopped using marijuana was because she mistakenly referenced her cessation as a month or two before her BI interview, when what she meant was a month or two before she completed her SCA, which was September 27, 2022. Had she used her SCA date rather than her BI dates, her cessation date would fall within the August 2022 timeframe. At her hearing, I was able to observe her demeanor while testifying, and after considering her various statements, and the testimony of her character witnesses, described below, I conclude that her testimony was credible and her explanation for the discrepancy plausible. (Tr. 75-76

Aside from Applicant’s erroneous statements that she stopped using marijuana in December 2022, after she was granted an interim security clearance on October 6, 2022, there is no evidence in the record that she had access to classified information at this time. To the contrary, Applicant testified that after she received her interim clearance, she was not given access to classified emails or networks, nor was she given additional access badges. (Tr. 76)

As stated above, Applicant had never filled out an SCA before. She found out about two to three weeks after she was hired in September 2022, that she would be submitted for a security clearance. She was not given any instructions before she completed her SCA. She answered “no” to the SCA question about whether she had illegally used any drugs or controlled substances in the past seven years. She explained the reason she answered “no” was because her use, within that time frame, was all done in states where marijuana use was legal for recreational purposes, and therefore she believed it was “legal” rather than “illegal” use. During my questioning of her at the hearing, I asked her about the introductory paragraph under Section 23 of her SCA, which, *inter alia*, states the drug use applies to illegal drugs under federal laws, even though permissible under

state laws. She stated she did not recall reading that specific sentence. Upon reading it now, she realizes she should have answered "yes" to the pertinent questions. She denied that her "no" answer was given deliberately to conceal her past marijuana use. (Tr. 62, 77-79; 90; GE 1; AE A)

Applicant revealed her marijuana use during her BI in December 2022. She was asked by the investigator if she used any illegal drugs, including marijuana, in the past seven years. She immediately replied that she had used marijuana in states where it was legal. The investigator told her that marijuana was illegal under federal law, regardless of what state law may be, and that clearance holders could not use it at all. Applicant asked if she could amend her SCA to correct her earlier answer. (Tr. 79-80)

Whole-Person Information

Three witnesses testified on Applicant behalf. All three work or have worked professionally with her and they all also consider her a friend. They are:

Mr. R. He is a retired military officer, serving over 27 years, who holds a clearance. He met Applicant at a conference approximately three years ago. She helped him transition from the military world into the civilian contractor world. He considers her a mentor. Since knowing her, he has had nearly weekly contact with her. He is aware of the Government's concerns about her. Based upon his military experience, he is aware that potential security clearance applicants become confused about how to answer the questions about past marijuana use, given the difference between federal and some state laws on the subject. This is particularly true for persons filling out an SCA for the first time. He has never had any concerns about her engaging in illegal drug use. He vouches for her good judgment, trustworthiness, and reliability. He recommends granting of her clearance (Tr. 17-28);

Mr. G. He has worked in IT sales for the past 15 years. Between his military experience and government contractor service, he has held a clearance for 29 years. He has known Applicant since 2022. She worked on his team from approximately 2022 to 2024, when he left for another job. As her team leader, he witnessed her superb performance on a daily basis. He and his family are also personal friends with her. He is aware of the Government's concerns about her. He trusts her implicitly. He has no concerns that she will use illegal drug in the future. He also has no concerns about her working in a cleared environment. He recommends granting of her clearance (Tr. 31-44);

Mr. M. He has worked in the military or as a government contractor for the last 22 years, while holding a security clearance. He first met Applicant in about 2020 and he has worked many projects with her in the past five years. He described her as the consummate professional. She is a trusted advisor to him. He and his family are personal friends with her. He is aware of the Government's concerns about her. He has no personal knowledge of her using illegal drugs. He has no concerns about her holding a clearance.

He would trust her with watching his children, which she has done before. He recommends granting of her clearance (Tr. 50-57).

Three work colleagues, including her direct supervisor, provided declarations in support of Applicant. All stated they were aware of the SOR allegations. The general tone of all the declarations was that Applicant is a dedicated worker and a valued, trusted, and reliable employee, and the SOR allegations do not change their view of her. (AE B-D)

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 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, 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(a), the entire process is a careful weighing 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." 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of 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 also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline H, Drug Involvement and Substance Abuse

AG ¶ 24 expresses the security concern pertaining to drug involvement:

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.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. Two are potentially applicable in this case:

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

Applicant used marijuana, on various occasions, from 2000 to August 2022 (vice October 2022). I find that AG ¶ 25(a) applies to SOR ¶ 1.a. The evidence does not establish that she used marijuana from October 2022 to December 2022, while granted access to classified information. I find AG ¶ 25(f) was not established for SOR ¶ 1.b.

AG ¶ 26 provides conditions that could mitigate security concerns. Two potentially apply in this case:

- (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.

From 2000 to August 2022, Applicant used marijuana occasionally. She credibly stated that she stopped using it in August 2022 because she was in the process of applying for her current job. She stated she has not used it since that time, and there is no evidence to the contrary, other than her own erroneous statements about when she stopped using marijuana, which she has clarified. All her marijuana use was in a state which legalized marijuana use and her use was before she worked for a federal contractor. Several colleagues who have worked with her for the past three to five years are aware of the SOR allegations and they still remain confident in her trustworthiness, good judgment, and reliability. AG ¶ 26(a) applies. Her two-plus years of abstinence, under these circumstances, are sufficient to demonstrate a pattern of abstinence to make AG ¶ 26(b) also applicable.

Guideline E, Personal Conduct

AG ¶ 15 expresses the personal conduct security concern:

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.

16. Conditions that could raise a security concern and may be disqualifying include:

(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.

Applicant credibly testified that she answered "no" to the relevant drug questions on her September 2022 SCA because she was under the her marijuana use occurred in a state where such use was legal, thereby justifying a "no" answer. She had no intent to deliberately provide a false answer to hide her drug activity. Since the only evidence of

Applicant's drug activity comes from her own admissions, it would make little sense for her to attempt such deception then later admit to the conduct. Additionally, one of her witnesses, Mr. R, a former military officer, noted his experience where potential security clearance applicants were confused as to the correct response when disclosing marijuana use since it is legal in some states. On the whole, I do not find that the evidence was sufficient to show that Applicant deliberately falsified her SCA. AG ¶ 16(a) was not 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 the 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.

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 drug involvement security concerns or the concern was not established, and that the personal conduct security concern under Guideline E was not established.

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:

FOR APPLICANT

Subparagraphs 1.a-1.b:

For Applicant

Paragraph 2, Guideline E:

FOR APPLICANT

Subparagraph 2.a:

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. Eligibility for access to classified information is granted.

Robert E. Coacher
Administrative Judge