



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



In the matter of:)
)
) ISCR Case No. 07-04439
)
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: Pro Se

January 23, 2008

Decision

DAM, Shari, Administrative Judge:

Applicant failed to rebut or mitigate the Government's security concerns raised under Guideline H, Drug Involvement. His eligibility for a security clearance is denied.

On April 25, 2006, Applicant submitted his Security Clearance Application (SF 86). On August 22, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline H for Applicant. 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 acknowledged receipt of the SOR on August 28, 2007. On September 7, 2007, he answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. On October 18, 2007, Department Counsel prepared

a File of Relevant Material (FORM), containing seven Items, and mailed Applicant a complete copy on October 23, 2007. Applicant received the FORM on October 29, 2007, and had 30 days from its receipt to file objections and submit additional information. On November 8, 2007, Applicant submitted a letter that I marked Applicant Exhibit (AE 1) and admitted into the record without objection from Department Counsel. On December 21, 2007, I received the case assignment.

Findings of Fact

In his Answer to the SOR, Applicant admitted all factual allegations contained in ¶¶ 1.a through 1.f of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 28 years old and single. In May 2001, he graduated from a prestigious university with a Bachelor of Science in Engineering. In September 2001, he began working as a software engineer for his current employer, a federal contractor. In April 2006, he submitted an SF 86. (Item 4).

In December 2006, a government investigator interviewed Applicant regarding disclosures he made in the SF 86 about his drug use. Applicant admitted that he used: marijuana at least twenty times from November 2000 to August 2003; ecstasy two to three times from February 2001 to December 2002; mushrooms twice from April 2001 to February 2006; LSD two to three times from August 2001 to December 2004; cocaine about twenty-five to thirty-five times from about May 2002 to December 2003; and methamphetamine at least three times from June 2003 to October 2003, at home, and once in 2006 while traveling in a foreign country to visit a friend. (Item 5; AE 1).

During the interview, Applicant stated that he “was probably dependent on [cocaine] but he isn’t now.” (*Id.* at 3). He has no intention of using drugs in the future. He did not receive any substance abuse counseling or engage in rehabilitative measures. (*Id.* at 4). In his letter of November 8, 2007, Applicant included a signed statement of his intention not to use drugs again, with the caveat that if he violated his pledge, his security clearance would be revoked immediately. (AE 1 at 4).

Applicant also noted in his recent letter that he purchased a house in April 2003, paid off his student loans ahead of schedule, has no criminal record, maintained his job with above average performance ratings, and voluntarily disclosed his substance abuse in the SF 86 and to his family, friends and employer. He no longer associates with those friends with whom he used drugs. He also stopped drinking alcohol entirely. (*Id.* at 1 and 2).

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. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense 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 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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.

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 or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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

Guideline H, Drug Involvement

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

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. (a) Drugs are defined as mood and behavior altering substances, and include: (1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and; (2) inhalants and other similar substances; (b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

Based on Applicant's admissions that he used illegal drugs from approximately 2000 until December 2006, the Government raised a potentially disqualifying condition under AG ¶ 25(a) "any drug abuse (see above definition)."

After the Government produced substantial evidence of that disqualifying condition, the burden shifted to Applicant to produce evidence and prove mitigation. I considered two mitigating conditions under AG ¶ 26 that may be potentially applicable to the disqualifying condition:

(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) 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;

(3) an appropriate period of abstinence; and,

(4) a signed statement of intent with automatic revocation of clearance for any violation;

Based on my evaluation of the record evidence as a whole, I conclude that AG ¶ 25(a) does not apply. Applicant used illegal drugs from 2000 until December 2006. His usage was frequent and occurred with his friends, the last incident being about a year

ago while traveling out of the country. Given his six-year history of significant drug use, an asserted year of abstinence is insufficient to trigger application of this condition. His past behaviors do cast doubt on his trustworthiness and good judgment.

Applicant stated he no longer associates with his friends that use drugs. He also signed a statement that he would agree to an automatic revocation of his clearance should it be determined that he used drugs in the future. Those facts warrant the limited application of AG ¶ 26 (b) “a demonstrated intent not to abuse any drugs in the future,” as noted by his (1) “disassociation from drug-using associates and contacts,” and (4) “a signed statement of intent with automatic revocation of clearance for any violation.” Without independent evidence to corroborate his dissociation from former friends or an established system to monitor his decision not to use drugs (if given a clearance), full application of this condition is not warranted.

Whole Person Concept

In addition to evaluating the disqualifying and mitigating conditions under each guideline, the adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. The essence of scrutinizing all appropriate variables in a case is referred to as the “whole person” analysis. In evaluating the conduct of the applicant, 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.” 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. Applicant is a 28-year-old man, who began using drugs frequently in college and continued using them past graduation, including while employed with his current employer, a federal contractor, and seemingly after he completed his SF 86. While I find his articulated accomplishments over the past couple years commendable, along with his honesty and statements that he does not intend to use drugs in the future helpful, I am not convinced that he mitigated his six-year history of drug abuse. Without independent corroboration from an appropriately credentialed health care provider and/or other sources, documenting Applicant’s assertions that he is drug free, I am concerned there is a strong likelihood that he will use drugs in the future.

