



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-06343
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Larry N. Jones, Esquire, Department Counsel
For Applicant: Tom Rogers, Esquire

Decision

HENRY, Mary E., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on December 1, 2006. On August 13, 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 24, 2007. He submitted a notarized, written response to the SOR allegations on August 29, 2007, and requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a File of Relevant Material (FORM) and provided Applicant with a complete copy on October 29, 2007. Applicant received the FORM on

November 9, 2007. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He submitted a response, dated November 13, 2007. The hearing office assigned this case to me on January 15, 2008. The government submitted eight exhibits, which have been marked as Gov E 1-8 and admitted into the record. Based on a review of the case file, pleadings and exhibits, Applicant has mitigated the government's security concerns under Guideline H. His eligibility for a security clearance is granted.

Procedural and Evidentiary Rulings

Under the procedural guidance rules of the Directive, the government cannot submit documents from the Report of Investigation (ROI), without an authenticating witness. In the instant case, the government, through counsel, mailed Applicant Interrogatories, which included a copy of the summary of his unsworn personal interview with the investigator. Because this document is part of the ROI, the Directive prohibits the government from using this document as evidence without an authenticating witness. (Directive E1 Section 5(a) and ¶ E.3.1.20).

The ROI document may be admitted into the record if the Applicant waives his right to object to its admission as evidence. In the instant case, Interrogatory number 2 requested the Applicant to review the summary report of his interview and authenticate the report, which he did when he responded yes to Interrogatory number 3. He then swore under oath that this information was true and correct to the best of his knowledge. Applicant did not object to the admission of this document in his response dated November 13, 2007.¹ I find that Applicant waived his right to exclude this evidence, which is admitted into the record.

Findings of Fact

In his Answer to the SOR, dated June 25, 2007, Applicant admitted the factual allegations in ¶¶ 1.a-1.d of the SOR, with explanation.

Applicant is 27 years old. Applicant graduated from college with a Bachelor of Science degree in May 2003. He received a Masters of Science degree in July 2004. He started his employment with a defense contractor in August 2004. When he accepted this job, he relocated to a different part of the country from where he lived and attended college. He married his long-time girlfriend in July 2005. In August 2006, his employer promoted him to his current position of senior technical account manager. He completed his SF-86 in December 2006, after being promoted.²

In 1997, while still a high school student, Applicant smoked his first marijuana cigarette with friends in a private home. For the next two years, he and his friends

¹Gov E 5 (Interrogatory with attachments); Response to FORM, dated November 13, 2007.

²Gov E 4 (SF-86) at 6, 11-14, 21-22.

smoked marijuana two to four times a month in a social setting. He never purchased any marijuana during this time. The marijuana made him feel relaxed, mellow or sometimes paranoid. During this same period of time, he experimented with hallucinogenic mushrooms four times. As with marijuana, he used the hallucinogenic mushrooms at a party with friends.³

After starting college in 1999, he gradually increased his use of marijuana. During his last year of undergraduate school and while pursuing his masters degree, he used marijuana daily to relieve stress. He purchased marijuana for his own use during this same time period.⁴

Applicant's use of marijuana decreased significantly once he completed his education and moved to another area of the country. He did not know where to purchase marijuana after he moved. He also concluded that he could not afford to purchase the drug for his personal use on a regular basis. From August 2004 through May 2006, he used marijuana once very two to three months. His girlfriend, now his wife, provided him with marijuana in 2004. In May 2006 he purchased marijuana which he and his wife smoked at home over the next month. He decided after this use that he could no longer afford to purchase marijuana and that he would not use it.⁵

In August 2004, he again experimented with hallucinogenic mushrooms. His use caused him to become extremely paranoid and visually hallucinate. He lost control of himself and passed out. When he awakened, he decided he would not use this drug again. He has not. He has no intent to use hallucinogenic mushrooms or marijuana in the future, a statement he has made twice in writing. He denies that he has a drug problem and insists he is not a drug abuser.⁶

Applicant and his wife purchased a house. He performs yard work and home projects when he is stressed. He also exercises and travels to help relieve his stress. He has a healthy support system with his family, wife, friends and colleagues, who are not drug users. Marijuana or other illegal drug use would negatively impact his future.⁷

Applicant has not served in the military. He has no arrest record or financial problems. He willingly admitted to his drug use on his SF-86, estimating his use of

³Gov E 3 (Applicant's response to the SOR) at 3-4; Gov E 5, *supra* note 1, at 2.

⁴*Id.*

⁵Gov E 5, *supra* note 1, at 2-3.

⁶*Id.* at 3; Gov E 3, *supra* note 3, at 3; Response to FORM at 1.

⁷Gov E 3, *supra* note 3, at 3-4.

marijuana at approximately 300 times. I find that Applicant has been forthcoming and truthful about his drug use in the security clearance process.⁸

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.

⁸Gov E 4, *supra* note 2.

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

The security concern relating to the guideline for drug involvement is set out in AG ¶ 24:

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.

AG ¶ 25 describes two conditions that are relevant to this case, could raise a security concern, and may be disqualifying:

(a) any drug abuse (see above definition);

(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.⁹

Applicant began smoking marijuana as a high school student. He continued smoking marijuana in college and gradually increased his use of marijuana until he used it on a daily basis. He also experimented on five occasions with Hallucinogenic mushrooms. He purchased marijuana as a college student and most recently in May 2006. He never purchased hallucinogenic mushrooms. To smoke marijuana or use the hallucinogenic mushrooms, he had to possess them. Because of Applicant's drug use, the above disqualifying conditions apply.

⁹The remaining disqualifying conditions do not apply in this case.

AG ¶ 26 provides one condition that could mitigate security concerns:

(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.¹⁰

Applicant's use of hallucinogenic mushrooms stopped after his last use in 2004, when he experienced serious problems with this drug. In August 2004, he moved many miles from his home and friends. He changed his life style and his methods for dealing with stress. He uses physical activity, such as exercise and yard work, to reduce his stress. He travels, which is another means of relaxing. He has developed new friends who have a different life style from his friends at home and in college. With his new friends, drugs are not an issue. He has not smoked marijuana in more than 18 months and has twice stated in writing that he does not intend to smoke marijuana or use any illegal drugs in the future. AG ¶ 26 (b) partially applies because Applicant's actions clearly demonstrate his intent not to use drugs in the future as a means to cope with stress or for recreational purposes. This mitigating conditions is not fully applicable because he has not agreed to the automatic revocation of a clearance for any violation.

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." 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 regularly used marijuana

¹⁰The remaining mitigating conditions are not raised in this case.

for seven years, initially when socializing with friends. For two years, he used it daily to relieve stress. His high level of marijuana use was abusive and serious. He voluntarily chose to smoke marijuana and to experiment with hallucinogenic mushrooms. When he made this decision, he knew these drugs were illegal.

When he completed his education and moved away from family and friends in 2004, he significantly reduced his use of marijuana. His decision in June 2006 to abstain from smoking marijuana or using any other illegal drugs is not recent.¹¹ He credibly stated that he did not intend to use drugs in the future. Applicant made poor decisions as a teenager about drugs. When he matured and became a member of the working world, he learned that drug abuse could have very negative consequences for his future. He changed his lifestyle and his friends. The one person still closely involved in his life who smoked marijuana with him is his wife. Although he has not explicitly stated that his wife no longer uses drugs, I find his statement that his current associates are non-drug users to also include his wife. Applicant voluntarily provided all the information the government knows about his drug use. He did not try to minimize his past drug use during his personal interview or on his SF-86. Because he has been straight forward and candid about his drug usage, I find his statements about abstaining from drug use now and in the future credible. There is little likelihood that he will resume his past drug activities and use illegal drugs. Since he has been open about his past drug use, the potential for pressure for coercion, exploitation, or duress because of his past drug use does not exist. Applicant has mitigated the government's security concerns about his drug involvement.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his drug involvement.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant

¹¹The Directive does not define "recent," and there is no "bright-line" definition of what constitutes "recent" conduct. ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 2006) (Judge did not err by concluding drug use not recent with passage of slightly less than two and a half years between last use and hearing) (citing ISCR Case No. 02-10454 at 4 (App. Bd. Nov. 23, 2004)). See ISCR Case No. 98-0611 at 2 (App. Bd. Nov. 1, 1999) (not error for Judge to find that last marijuana use nine months before close of record was not recent).

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for a security clearance is granted.

MARY E. HENRY
Administrative Judge