



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



In the matter of:)
)
) ISCR Case No. 14-02143
)
Applicant for Security Clearance)

Appearances

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

03/27/2015

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. He used marijuana from June 2005 until 14 months before the hearing. He signed a statement of intent with automatic revocation of clearance for any future illegal drug involvement. The passage of time since his last usage is limited, but is sufficient to mitigate the drug involvement concern. The criminal conduct security concern is also mitigated. Clearance is granted.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on August 15, 2014, the DoD issued an SOR detailing security concerns. DoD adjudicators could not

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*

find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. In an undated response, Applicant answered the SOR and requested a hearing. On January 15, 2015, I was assigned the case. On January 27, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the hearing convened on February 9, 2015. I admitted Government's Exhibits (Ex) 1 and 2 and Applicant's Exhibits A, without objection. The record was held open to allow Applicant to submit additional information. Additional material (Ex. B through E) was submitted and admitted into the record without objection. Applicant testified at the hearing as did his spouse. On February 19, 2015, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he admitted using marijuana once every two or three months from June 2005 to December 2013. He also admitted purchasing marijuana every four or five months during the same period. He denies continuing to associate with individuals who use illegal drugs and admits the Guideline J, criminal conduct, allegation related to his marijuana use. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 28-year-old systems administrator who has worked for a defense contractor since October 2013, and seeks to obtain a security clearance. Applicant's co-workers and supervisors state: Applicant is an upstanding citizen and a proactive member of the community who has a strong work ethic and personal integrity. (Ex. B, C, D)

On his December 2013 Electronic Questionnaires for Investigations Processing (e-QIP), he indicated that he would buy marijuana and smoke it on occasion. (Ex. 1) His first involvement was in June 2005, when he would have been 18 years old and a high – school senior. (Tr. 14) From 2010 to 2013, Applicant used marijuana three to five times a year. (Tr. 25) During those three years, he used it 12 to 15 times. (Tr. 25)

Applicant, in his January 2014 Personal Subject Interview (PSI), said he fully disclosed his past illegal drug usage and possession. He stated he smoked marijuana with friends every two or three months. (Ex. 2) Every four or five months, he would purchase enough marijuana for one or two cigarettes. (Ex. 2) He indicated he last used marijuana in December 2013 and there were periods where he had previously abstained from using. At the beginning of 2013, he had abstained. He stopped using because "he felt like he was wasting time and his life. It also is not worth the risk and his wife has asthma, and it was not good for her to be around it." (Ex. 2)

At the time of the PSI, one of Applicant's friends still smoked marijuana, but his other friends had stopped. (Ex. 2) In November 2014, he last saw this friend at a wedding. (Tr. 22) He told his friend that his life had changed, and he had stopped using marijuana. (Tr. 22) He stated none "of my friends really smoke anymore." (Tr. 26)

(January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

At the hearing, Applicant indicated that smoking marijuana was a waste of time and money and did not contribute to reaching his goals. (Tr. 15) It is illegal. His wife is against it and does not tolerate it. She had given him a March 2014 deadline to quit using marijuana. (Tr. 30) He stopped before the deadline arrived. His wife is certain he will not use marijuana again. (Tr. 32) His goals are for his wife to return to school, to save up, and buy a house. (Tr. 26) With a clearance, he would be eligible to become a senior systems administrator. (Tr. 27)

Applicant graduated from college in 2009 and he married in October 2013 – two months before his last use. (Tr. 16) In November 2013, he started his current job. He made the decision to get rid of the marijuana he had and used it once after his marriage and after starting his current job. (Tr. 18) In retrospect, he realizes he should have disposed of the remaining marijuana differently. (Tr. 19) He saw the disposing of the marijuana as ending that part of his life. (Tr. 20) He normally purchased enough for one or two cigarettes so the amount remaining which he disposed of by smoking was small. Between August 2013 and December 2013, he used marijuana once. (Tr. 21)

At Applicant's current job, there was no intake urinalysis, and he is not subject to random urinalysis. (Tr. 19) In late January 2015, one or two days after receiving the notice of hearing, he had a voluntary urinalysis that was negative for the presence of illegal drugs. (Ex. A, Tr. 24) It was the only urinalysis he has ever had. (Tr. 24) Applicant submitted a signed statement of intent with automatic revocation of clearance for any violation. (Ex. E)

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

From 2005 until December 2013, Applicant used marijuana every two or three months and, during the same period, would purchase marijuana every four or five months. AG ¶ 25(a) and AG ¶ 25(c) apply.

AG ¶ 26 sets forth conditions that could mitigate security concerns as follows:

(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;
- (3) an appropriate period of abstinence; and,
- (4) a signed statement of intent with automatic revocation of clearance for any violation.

In December 2013, Applicant used marijuana one time, the last time, two months after his marriage and one month after obtaining his current job. He used it to get rid of it for that part of his life had changed and he intended not to use marijuana in the future. It would have been better had he chose a different way to get rid of his remaining marijuana. He has no intention of using marijuana in the future. He fully disclosed his past use and possession on his December 2013 e-QIP and during his PSI. He was not attempting to hide or minimize his prior use or purchase.

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 his intent not to abuse illegal drugs in the future. He has disassociated himself from drug-using associates and contacts. At a wedding last November, he saw a friend who is still using marijuana. Applicant informed his friend his life was changing and he no longer used marijuana. He no longer associates with the drug-abusing friends. He has made the decision that marijuana is no longer part of his future and is incompatible with his goals. He also

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.

signed a statement of intent with automatic revocation of clearance for any violation. AG ¶ 26(b)(4) applies.

Applicant ended his drug abuse in December 2013. The motivations to stop using drugs are evident. Obtaining 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. He understands the adverse results from drug abuse. He has shown or demonstrated a 14-month track record of abstinence from illegal drug use.

Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct, "Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations."

AG ¶ 31(a) states it may be disqualifying where there "a single serious crime or multiple lesser offenses." Similarly, AG ¶ 31(c) provides "allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted" may be disqualifying. Use and possession of marijuana is still a federal crime.

Security concerns raised by criminal conduct may be mitigated under certain circumstances. AG ¶ 32(a) provides conditions that could mitigate security concerns if "so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment." Applicant's marijuana use is unlikely to recur. This mitigating condition partially applies. It has been less than a year and a half since his last used marijuana.

Under AG ¶ 32(d), criminal conduct may be mitigated if "there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement." Within two months of his marriage and within one month of obtaining Applicant's current job, he last used marijuana. He has not used since. There is "clear evidence of successful rehabilitation. This potentially mitigating condition applies.

Under AG ¶ 32(d), "there is evidence of successful rehabilitation, including but not limited to the passage of time without recurrence of criminal activity and remorse." During his January 2014 interview, Applicant was forthcoming about his past use and purchase of marijuana. He did not try to hide or minimize his past drug involvement.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant lifestyle and goals are changing. Marijuana is no longer a part of his life. He has informed his friends that he no longer uses marijuana. His spouse is against its use. Since 2005, he used marijuana three to five times a year. Since August 2013, he has used it once. He has not used since December 2013.

Applicant's security worthiness is based on a multitude of factors and not only on the passage of time since his last use. Changes in his lifestyle, goals, influence from his spouse, and his honesty are also factors which are very relevant. Importantly, he informed the Government fully about his illegal drug use when he completed his e-QIP and also during his PSI. His honesty in making the disclosures displays integrity, which makes his claim he will not use in the future, that much more deserving of belief. He most recently used marijuana 14 months ago, which is sufficient to mitigate the security concern.

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

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
Paragraph 2, Criminal Conduct:	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 a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge