



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



In the matter of:)
)
) ISCR Case No. 14-03102
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: Kristan A. Siegart, Esquire

06/29/2015

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s history of poly-drug abuse covers a period of 11 years ending in 2013. His ADHD and difficulty handling anxiety make it more likely that he will succumb to these pressures and resume self-medication with illegal drugs. He has five misdemeanor-level convictions from 2005 through 2009, and an additional 2009 driving while intoxicated conviction. More time without illegal drug use, or other criminal behavior, is necessary to provide assurance of Applicant’s successful rehabilitation and eligibility for access to classified information. He did not mitigate drug involvement and criminal conduct concerns. Clearance denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on April 25, 2013. The Department of Defense (DOD) issued him a Statement of Reasons (SOR) alleging security concerns under Guideline H (drug involvement) and Guideline J (criminal conduct) on August 5, 2014.¹ Applicant answered the SOR on August 28, 2014, and

¹ The DOD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the Adjudicative Guidelines

requested a hearing before an administrative judge. The case was assigned to me on April 9, 2015, after Applicant requested an expedited hearing. That same date, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing scheduling a hearing for April 13, 2015.

Applicant affirmatively waived his right to 15 days advanced notice of the hearing. (Tr. 10-11) Department Counsel offered six exhibits into evidence (GE 1 – 6), and Applicant offered one exhibit with eight parts into evidence (AE 1 with Tabs 1-8). There were no objections, and I admitted all exhibits into evidence. DOHA received the hearing transcript (Tr.) on April 21, 2015.

Findings of Fact

In his answer, Applicant admitted all the factual allegations in the SOR. His admissions are incorporated herein as findings of fact. SOR ¶ 1.h alleges that after October 2006, Applicant attended a drug treatment program. Applicant correctly argued that this allegation does not constitute a disqualifying condition under Guideline H. Applicant is credited with mitigating SOR ¶ 1.h. After a complete and thorough review of the evidence of record, I make the following additional findings of fact:

Applicant is a 28-year-old employee of a federal contractor. He graduated from high school in 2005, and received an associate's degree in 2010 and a bachelor's degree in 2012. Applicant married in 2014, and his daughter was born in 2015. He has been working for his current employer since May 1, 2013. He requires a security clearance to continue his employment.

Applicant has a long history of illegal poly-drug use. From June 2007 to January 2013, he used Ecstasy about 15 times; from June 2005 to August 2007, he used cocaine about three times; from April 2004 to June 2006, he used psilocybin mushrooms twice; from October 2002 until March 2012, he purchased marijuana on diverse occasions; and from October 2002 to April 2013, he used marijuana on numerous occasions and sometimes on a daily basis. Applicant also used lysergic acid diethylamide (LSD) one time between April 2004 and June 2006.

When Applicant was completing his 2013 SCA, he realized he needed to end his illegal drug abuse, to stop associating with drug users, and to focus on his family. He learned that his drug abuse was a form of self-medication, and he recognized the need for change. He acknowledged that he needed to learn coping mechanisms for addressing his stress and anxiety. He stopped his drug abuse previously, and was in a substance abuse treatment program for six months; however, in April 2013, he made a stronger commitment to ending his drug abuse because of his relationship with the woman he subsequently married, and because he wanted to retain his employment. (Tr. 90, 93)

for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.

Applicant signed a statement of intent to not use illegal drugs in the future, and agreed to the automatic revocation of his security clearance for any violation. (AE 1(1)) Applicant provided urine samples for urinalysis-drug testing on November 10, 2014, December 26, 2014, and March 14, 2015. All three tests were negative for the presence of illegal drugs. (AE 1(2)) Applicant promised he would not resume his drug abuse. He has reduced his alcohol consumption from about five beers at a sitting to a beer or two. He meets with a therapist about every three weeks.

Applicant's spouse discovered he was abusing marijuana when they were dating. He tried to stop abusing drugs "many times." (Tr. 61) It was necessary for him to stop being around other drug users for him to refrain from drug abuse. In 2013, he ended his association with other drug abusers and his use of illegal drugs. He found new hobbies and improved his physical fitness to refrain from his drug abuse. In 2015, he was further motivated on his efforts to avoid drugs by his desire to be a good father to his daughter. He ended his alcohol consumption on March 26, 2015. Applicant's wife was pleased with his decision to end his drug abuse. She randomly tests him for illegal drug use with test kits she purchased commercially. He was negative for use of illegal drugs on all of her drug tests.

Applicant's mother testified that Applicant was diagnosed with attention deficit disorder (ADD) when he was a child. He was treated with Ritalin and Adderall. He did not want to take his medications because he could not sleep at night. She first became aware that he was abusing alcohol and drugs in 2001, when he was in the 9th grade.

In 2013, Applicant decided to change his life. He improved his physical conditioning, he focused his energies on his family and work, embarked on learning projects, gained positive friendships with mature adults, and he decided to refrain from abuse of alcohol and drugs. Applicant is now an attentive and dedicated father to his child. Applicant told his mother that he ended his drug abuse in 2013.

Dr. N testified as an expert witness. She is a licensed clinical psychologist that received a Ph.D. in 1970. (AE 1(7)) She is the director of a small mental health clinic, and specializes in the treatment of Attention Deficit Hyperactivity Disorder (ADHD). Applicant sought an assessment from Dr. N. She interviewed Applicant for 90 minutes, and he completed two ADHD-related questionnaires. Dr. N noted that abuse of illegal drugs is common for those suffering from ADHD - "[y]outhful experimentation, poor judgment, impulse control, [and] self-medication" of anxiety and depression with illegal drugs and alcohol are common behaviors. The great majority of those suffering from ADHD do not complete college; however, Applicant was able to do so after seven years, showing exceptional perseverance. Patients with ADHD often mature as they age through their 20s, and they are able to persevere and become successful.

Dr. N believes Applicant is on a "very positive path," and he is unlikely to return to any kind of substance abuse. He has managed not to relapse despite the pressures of marriage, parenthood, employment, and financial concerns. He is currently suffering

from anxiety and worries about whether he will lose his security clearance and employment. She recommended Applicant receive treatment for anxiety management. He is receiving help from a psychotherapist. She provided a positive prognosis stating that he should be able to continue to refrain from drug abuse.

In addition to his drug-related criminal behavior, the following incidents raised criminal conduct security concerns: In October 2005, Applicant and some friends were driving around, and Applicant was hitting cars with a metal object. Applicant was charged with (1) Destruction of Property—Monument—Value Greater than \$1,000, a felony, and (2) Destruction of Property, misdemeanor. He was convicted of two counts of destruction of property at a misdemeanor level, and the court sentenced him to six months in jail (suspended) and probation for six months.

In October 2006, Applicant was charged with Possession of Drug Paraphernalia, a misdemeanor. In March 2007, he pleaded guilty, and the court placed him on probation for six months.

In June 2007, Applicant was drinking beer on the beach with friends around a bonfire. Applicant was charged with possession of an open container of alcohol, a misdemeanor. He pleaded guilty, and the court placed him on probation.

In January 2009, Applicant was involved in a traffic accident. His blood alcohol content (BAC) was .178. He was charged with Driving While Intoxicated (DWI), a misdemeanor. In April 2009, he was convicted of DWI, and sentenced to 60 days in jail, with 56 days suspended. He was on probation until April 2010.

Applicant's pastor has known Applicant for 15 years. He stated that Applicant has been active in his church. He has seen Applicant mature over the years, and believes that he is now "an outstanding citizen in his community." (AE 1(3))

Applicant's manager describes him as having "strong character, deep desire to truly support the Army, and potential to learn, grow, and master" his specialty. He is trustworthy, reliable, committed to the Army and his country, diligent, and patriotic. He supports approval of Applicant's security clearance. (AE 1(4))

Applicant's father is a retired Army lieutenant colonel; his mother is a retired Army colonel; and they have been married for 32 years. His father retired in 1996, and became a government contractor. He has held a security clearance since 1977. He attributed Applicant's drug abuse to self-medication for ADHD and friends who were bad influences. He praised Applicant for his "turnaround" and lauded him for being extremely trustworthy and honest. (AE 1(5))

Applicant's best friend has known Applicant for more than 10 years. He believes that Applicant has matured, surrounds himself with successful people, and stopped using illegal drugs. He is confident Applicant will not resume his illegal drug use, and he supports reinstatement of Applicant's security clearance. (AE 1(6))

In 2005, Applicant received a \$1,000 military service scholarship. In 2014, Applicant received security training, sexual harassment and assault prevention training, AT Level 1 awareness training, and security refresher training. (AE 1(8))

Policies

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Drug Involvement

AG ¶ 24 articulates the security concern concerning 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.

AG ¶ 25 describes two drug-involvement disqualifying conditions that could raise a security concern and may be disqualifying in this particular case: "(a) any drug abuse;"² and "(c) illegal drug possession."

Applicant has a history of illegal drug involvement. He used Ecstasy about 15 times from June 2007 to January 2013. He used cocaine about three times from June 2005 to August 2007. He used psilocybin mushrooms twice between April 2004 and June 2006. He purchased and used (sometimes on a daily basis) marijuana on diverse occasions from October 2002 to April 2013. Applicant used LSD on one occasion between April 2004 and June 2006. He disclosed his drug involvement on his April 25, 2013 SCA, his SOR response, and at his hearing. AG ¶¶ 25(a) and 25(c) apply.

AG ¶ 26 provides for potentially applicable drug involvement mitigating conditions:

(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;

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

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and

(d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements,

²AG ¶ 24(b) defines "drug abuse" as "the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction."

without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Considering the period during which Applicant illegally used drugs, and number and type of drugs he used, I find that his illegal drug use is recent. Applicant's recent recognition of the adverse impact on his life of his drug abuse is encouraging. His current behavior creates some certitude that he will continue to abstain from drug use. AG ¶ 26(a) partially applies to his illegal drug-related offenses, but does not fully mitigate the concerns.

Applicant has disassociated from his drug-using associates, friends, and contacts. He has broken his patterns of drug abuse, and he has changed his life with respect to illegal drug use. However, he has only abstained from drug abuse for about 24 months, and his drug abuse is recent. Applicant provided "a signed statement of intent with automatic revocation of clearance for any violation." AG ¶ 26(b) partially applies, but does not fully mitigate the concerns.

AG ¶ 26(c) is not applicable because Applicant did not abuse prescription drugs. Applicant satisfactorily completed a drug treatment program; however, he cannot receive full credit because he resumed using illegal drugs after the treatment program. AG ¶ 26(d) partially applies, but does not fully mitigate the concerns.

In conclusion, Applicant ended his 11-year period of poly-drug abuse in April 2013, about 24 months before his hearing. The motivations to stop using illegal drugs are evident. He understands the adverse results from drug abuse.³ Applicant's progress so far is encouraging; however, considering the period during which he abused illegal drugs, and the type and number of drugs he used, the passage of time so far is insufficient to establish his successful rehabilitation, that his recidivism is unlikely, and to demonstrate his maturity and good judgment. He failed to mitigate drug involvement security concerns.

Criminal Conduct

AG ¶ 30 expresses the security concern about 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 describes two conditions that could raise a security concern and may be disqualifying in this case, "(a) a single serious crime or multiple lesser offenses," and "(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted."

³Approval of 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.

Applicant has a history of criminal misconduct. In October 2005, Applicant was charged with Destruction of Property—Monument—Value Greater than \$1,000, a felony, and Destruction of Property, a misdemeanor. He was found guilty of two misdemeanor counts of destruction of property. In October 2006, Applicant was convicted of Possession of Drug Paraphernalia, a misdemeanor. In June 2007, Applicant was convicted of possession of an open container of alcohol, a misdemeanor. In January 2009, Applicant was convicted of DWI, a misdemeanor. AG ¶¶ 31(a) and 31(c) apply.

AG ¶ 32 provides four conditions that could potentially mitigate security concerns:

(a) 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;

(b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) evidence that the person did not commit the offense; and

(d) 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.

Applicant has five misdemeanor-level convictions from 2005 through 2009. His offenses appear to be substance-abuse related. He ended his illegal drug use in April 2013 and his alcohol use in March 2015. I note that he has not been arrested for any criminal offenses since January 2009. In the last two years he married, and his daughter was born. He appears to be more mature, and to be making efforts to show his successful rehabilitation. He expressed regret and remorse for his criminal behavior.

Notwithstanding, Applicant's illegal drug use is recent and more time without criminal offenses is necessary before his rehabilitation will be established. His criminal conduct continues to cast doubt on his ability and willingness to comply with the law, rules, and regulations. Doubts persist about Applicant's reliability, trustworthiness, and good judgment. Criminal conduct concerns are not mitigated.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c). I have incorporated my comments under Guideline H and Guideline J in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

There is some evidence supporting approval of Applicant's clearance. Applicant was young and immature when he began using illegal drugs. His drug abuse may have been caused, in part, by his ADHD condition. Applicant is now a 28-year-old employee of a federal contractor and makes contributions to his employer. He has been making positive lifestyle changes. He completed a bachelor's degree in 2012, married in 2014, and his daughter was born in 2015. He is now dedicating himself to his family and his work.

Applicant's admissions of drug possession and use on his SCA are a positive sign that Applicant is taking responsibility for his drug abuse. He stopped using illegal drugs in April 2013. He participated in a drug-treatment program, and received a positive prognosis. He knows the consequences of drug abuse.

Applicant's pastor, manager, father, mother, spouse, and best friend credibly described the change that Applicant has undergone since April 2013 and support approval of his security clearance. They described him as mature, trustworthy and reliable. He is committed to his job, his family, and his country. He is diligent and patriotic. They are confident he will not resume his illegal drug possession and use. I am impressed with Applicant's sincerity and commitment to change, his promise to continue to refrain from using illegal drugs, and his decision to be honest in security matters.

The evidence against approval of Applicant's clearance is more substantial at this time. Applicant has an extensive history of poly-drug abuse covering a period of 11 years. Each time he possessed illegal drugs, he committed a state and federal crime. His ADHD and difficulty handling anxiety make it more likely that he will succumb to these pressures and resume self-medication with illegal drugs. He has five misdemeanor-level convictions from 2005 through 2009. In January 2009, Applicant was convicted of DWI after being involved in a traffic accident. His poor judgment in driving while intoxicated placed himself and other drivers at risk. He ended his alcohol consumption in March 2015.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont*, 913 F. 2d at 1401. Unmitigated drug involvement and criminal conduct security concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary to justify the award of a security clearance in the future.

Applicant's illegal drug use is recent and more time without substance abuse and criminal offenses is necessary before his rehabilitation will be established. Both his criminal conduct and drug abuse continue to cast doubt on his ability and willingness to comply with the law, rules, and regulations. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude Applicant has not fully mitigated the security concerns pertaining to drug involvement and criminal conduct.

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:	AGAINST APPLICANT
Subparagraphs 1.a through 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a through 2.d:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

JUAN J. RIVERA
Administrative Judge