



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



In the matter of:)
)
) ISCR Case No. 14-04113
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: Catie E. Young, Esq.

October 23, 2015

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant mitigated the Drug Involvement and Criminal Conduct security concerns that arose out of his marijuana use and purchases from 2005 and 2010, and his marijuana-related infraction in 2011. Eligibility for access to classified information is granted.

Statement of the Case

On June 5, 2013, Applicant completed an Electronic Questionnaires for Investigations Processing (e-QIP). On March 30, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H, Drug Involvement and Guideline J, Criminal Conduct. The action was taken under Executive Order (EO) 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 adjudicative guidelines (AG) effective after September 1, 2006.

Applicant answered the SOR on May 15, 2015, and requested a hearing before an administrative judge. The case was assigned to me on July 16, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 21, 2015, and the hearing was convened as scheduled on August 19, 2015. The Government offered Hearing Exhibit (HE) I, and Exhibits (GE) 1 and 2, which were admitted without objection. The Applicant offered Exhibits (AE) A through F, which were admitted without objection. Applicant testified on his own behalf. The record was left open for the receipt of additional documentation. On September 9, 2015, Applicant presented three additional exhibits, marked AE G through I. Department Counsel had no objections and AE G through I were admitted. DOHA received the hearing transcript (Tr.) on August 27, 2015.

Procedural Ruling

At the hearing on August 19, 2015, SOR ¶¶ 1.a and 2.a were amended in order to conform to the evidence, pursuant to Directive ¶ E3.1.17. (Tr. 60-61.) The allegations, as amended, read:

- 1.a. You were issued a citation for Possession of THC by the [state] Highway Patrol in approximately January or February of 2011.
- 2.a. That information set forth under paragraph 1, above.

Findings of Fact

Applicant is a 29-year-old government contractor. He has worked for his employer for the past five years. He graduated with a bachelor's degree in 2013. He is single and has no children. (GE 1; AE F.)

The Government alleged that Applicant is ineligible for a clearance under the guidelines for Drug Involvement and Criminal Conduct because he used and purchased marijuana. Additional concerns resulted from Applicant's marijuana-related charge in 2011. All of these facts raise questions about his reliability, trustworthiness, and ability to protect classified information. Applicant admitted SOR allegations 1.b, 1.c, and 1.d. He denied SOR allegations 1.a, 1.e, and 2.a. (Answer.)

Applicant used marijuana from the ages of 19 to 24 (May 2005 to February 2010). Initially, he used it two to three times per week with friends. His use gradually decreased to once or twice per month. He estimated that he purchased marijuana twenty times during that period. He also applied for and received a medical marijuana user's card for 2007 to 2009, which allowed him to purchase marijuana under his state's laws to treat his allergies. However, he let his marijuana card lapse in 2009 because he was able to access marijuana without buying it at dispensaries. Applicant described this five-year period of his life as his "toughest years," where he attempted to find his way. He attended several different colleges and had a hard time adjusting from high school to college. (AE F; Tr. 20-25.)

Applicant's last use of marijuana was in February 2010. He was in college at that time and decided to seek an internship with a government contractor. He knew he would be subject to random drug tests, so he ceased marijuana use. He was hired for the internship in September 2010. Despite ceasing marijuana use in 2010, he maintained friendships with marijuana users at his college. (GE 1; Tr. 24-25, 50-53.)

In January or February 2011, Applicant was issued a citation for possession of tetrahydrocannabinol (THC) by his state highway patrol. He was pulled over for speeding and the officer detected the smell of marijuana in the vehicle. A small amount of marijuana was detected in a search of the vehicle. Applicant testified that he was stopped for speeding shortly after dropping off a friend nearby. His friend had used marijuana in his car and unintentionally dropped some of it in the car before exiting. Applicant was not aware of the marijuana until it was discovered by the officer. Applicant was upset with his friend after this incident and made it known that he no longer wished to be involved with marijuana. Applicant has distanced himself from that marijuana-using friend, although he does not think that friend still uses marijuana. No one used marijuana in Applicant's vehicle after this incident. He satisfied the fine for this infraction. (GE 1; Tr. 25-31, 35-44, 57.)

On June 5, 2013, Applicant completed an e-QIP in connection with his position with a government contractor. The e-QIP asked questions in "Section 23 –Illegal Use of Drugs or Drug Activity," including: "**In the last seven (7) years**, have you illegally used any drugs or controlled substances?" In this section, Applicant voluntarily disclosed his marijuana use, purchases, and his citation for possession of THC on his e-QIP. He indicated that he did not intend to use marijuana in the future and that "I was younger and in college but that's all behind me." (GE 1.)

Applicant has signed a statement of intent to never use illegal drugs again. He has graduated from college and is now in a professional environment. He testified he does not attend parties where drugs are used and would leave any situation if he ever discovered drugs were present. A "hair 5-drug panel" conducted September 1, 2015, showed that Applicant tested negative for amphetamines, cocaine/metabolites, opiates, phencyclidine, and THC. (AE A; AE F; AE G; Tr. 54, 57.)

Applicant is well respected by those who know him, as verified by a manager and a friend that wrote letters of support on his behalf. They consider Applicant to be honest and trustworthy, despite his past marijuana use. He is dedicated to his work, and has an excellent work ethic. (AE B; AE H; AE I.) Applicant has received a number of awards and certificates for his work. (AE E.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2(a) describing 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 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.

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 EO 10865 provides that adverse 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.

I have considered all of the evidence in this case and the disqualifying conditions under Drug Involvement AG ¶ 25. The following are potentially applicable:

(a) any drug abuse; and

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

The Government presented sufficient information to support all of the factual allegations under Guideline H (SOR ¶¶ 1.a-1.e). Applicant used marijuana from at least 2005 to 2010 with varying frequency. He purchased it illegally and from marijuana dispensaries. His association with drug users led to his drug-related citation for possession of THC. The facts established through the Government's evidence and through Applicant's admissions raise security concerns under all of the above disqualifying conditions.

I have considered all of the evidence in this case and the mitigating conditions under Drug Involvement AG ¶ 26. The following are potentially applicable:

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

Applicant has worked hard to excel in his career, as detailed by his manager. He has not used marijuana since 2010. While he was cited for THC possession in 2011, he was not using marijuana at that time. Since his last marijuana use over five years ago, Applicant has matured. He has graduated from college and owns a house. He is now in a professional environment and does not attend parties where drugs are used. He no longer associates with current drug users and has distanced himself from the friend that left the marijuana in his vehicle in 2011. He is unlikely to use marijuana or even be in the same location as marijuana users in the future. The above mitigating conditions fully apply.

Guideline J, Criminal Conduct

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

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 conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

- (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.

Applicant admitted he pled guilty to the citation for possession of TCH in 2011. He paid the resulting fine. He also illegally purchased and used marijuana regularly from 2005 to 2010. The above disqualifying conditions have been established.

Two Criminal Conduct mitigating conditions under AG ¶ 32 are potentially applicable:

- (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; 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 was cited once for possession of marijuana. He further admitted to using marijuana for a five-year period in violation of federal laws. However, Applicant presented evidence of rehabilitation. He has been fully forthright with the government concerning his marijuana use. He has matured, from a young student to that of a trusted professional, since his last marijuana use. He demonstrated sincere remorse for his past poor judgment in using marijuana. I find that such criminal behavior is unlikely to recur. AG ¶¶ 32(a) and 32(d) were 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 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 pertinent facts and circumstances surrounding this case. Applicant was only 19 years old at the time he first used marijuana. His marijuana use continued for five years as Applicant went through difficult experiences while in college. Eventually, he matured and by the age of 24, he had ceased using marijuana. He has further shown maturity by distancing himself from his former marijuana-using friends. Applicant is highly respected by those who know him. He has been honest about his marijuana use with the Government. There is little potential for pressure, coercion, exploitation, or duress in this instance.

Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant 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, Guideline H:	FOR APPLICANT
Subparagraph 1.a-1.e:	For Applicant
Paragraph 2, Guideline J:	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.

Jennifer I. Goldstein
Administrative Judge