



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



In the matter of:)
)
) ISCR Case No. 14-04494
)
)
 Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

11/16/2015

Decision

WHITE, David M., Administrative Judge:

Applicant admitted that he smoked marijuana about ten times in social settings during his last few months of high school. He was arrested, but not prosecuted, on marijuana-related charges in 2013 after being falsely accused by another person. Resulting security concerns were mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SF 86) on March 6, 2013.¹ On January 6, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline H (Drug Involvement) and Guideline E (Personal Conduct).² The action was taken under Executive Order 10865, *Safeguarding Classified*

¹Item 3.

²Item 1. After Applicant clarified the timing of his SF-86 preparation and his subsequent arrest, Department Counsel properly withdrew the Guideline E (Personal Conduct) allegations in SOR ¶ 2. (See FORM at 2.)

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 that came into effect in the Department of Defense on September 1, 2006.

Applicant submitted a written response to the SOR on February 4, 2015, and requested that his case be decided by an administrative judge on the written record without a hearing.³ Department Counsel submitted the Government's written case on April 8, 2015. A complete copy of the File of Relevant Material (FORM)⁴ was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on June 11, 2015. He timely submitted additional material, which I admitted into the record as Applicant's Exhibit (AE) A, without objection by Department Counsel. I received the case assignment on August 3, 2015.

Findings of Fact

Applicant is 23 years old. He has never married and has no children. He graduated from high school in June 2010, and has taken some classes at a community college since then. He worked several temporary laborer jobs at a nearby military facility between 2008 and 2012, and has been employed by a defense contractor since November 2012. He never served in the military.⁵

Applicant admitted on his SF-86 that he experimentally smoked marijuana with high school friends on ten occasions from April to June 2010. He denied any subsequent drug involvement, and there is no credible evidence to the contrary. In January 2013 he was at a party to which police were called due to noise and parking complaints. Another person at the party was arrested for smoking marijuana. He falsely informed the arresting officer that the bag of marijuana and smoking paraphernalia on the ground near him belonged to Applicant, leading to Applicant's arrest for possession of less than 10 grams of marijuana and of paraphernalia. In January 2014, the former charge was dismissed at the prosecutor's request, and the latter was disposed of without trial when Applicant completed a year of unsupervised probation and paid \$157.50 in court costs⁶.

³Item 2.

⁴The Government submitted four Items in support of the SOR allegations. Item 4 contains the summary of an interview from the Office of Personnel Management (OPM) Report of Investigation. It is inadmissible in evidence without either a witness' authentication or adoption by Applicant per Directive ¶ E3.1.20. Neither appears in this record so Item 4 is inadmissible. It was not considered in reaching this eligibility decision.

⁵Item 3.

⁶Item 2; AE A.

Applicant credibly stated that he “has matured tremendously,” and “completely understands the need and requirements to avoid any instances which would lead to questions concerning [his] integrity and ability to abide by the law.” He understands that random drug testing is a condition of his employment, and has passed all such screening with negative results. He also said, “I do not intend on smoking marijuana in the future because I do not want to jeopardize any job opportunities and I don’t want to cause any future health problems.”⁷

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 (DCs) and mitigating conditions (MCs), 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, “[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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

⁷Item 2; Item 3; AE A.

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.

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.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. The DC raised by the evidence in this case is:

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

Applicant admittedly shared marijuana that was passed around among a group of his friends on ten occasions from April to June 2010. The record evidence does not support security concerns under AG ¶ 25(c), for illegal possession of marijuana or drug paraphernalia, since his 2013 arrest was based on a false accusation and charges dismissed by prosecutors. These facts shift the burden to Applicant to prove mitigation of resulting security concerns.

AG ¶ 26 provides conditions that could mitigate the security concerns. The facts in this case support application of two of them:

(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's abuse of marijuana more than five years ago, during his final few months in high school, was experimental and far removed in time and place from any work-related concerns. His free admission of this error in judgment is the only evidence that it took place, and supports the credibility of his intention not to repeat such conduct. There is substantial evidence that drug abuse is unlikely to recur, and that it does not cast doubt on Applicant's current reliability, trustworthiness, or good judgment. Mitigation under AG ¶ 26(a) was accordingly established.

Applicant no longer associates with his high school friends, and does not engage in recreational activities where peer pressure to use drugs might exist. He has been abstinent since June 2010, and credibly declared his intention not to abuse any drugs in the future. These facts establish additional mitigation under AG ¶ 26(b).

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 has matured since his experimental marijuana use in high school, and has held steady employment with a defense contractor for several years. He freely admitted his bad judgment as a teenager, and has demonstrated responsible conduct and rehabilitation since then. There is no identifiable potential for pressure, coercion, or duress since he is open and honest about these issues, and the likelihood of recurrence is minimal.

The record evidence leaves me without doubt as to Applicant's present eligibility and suitability for a security clearance. He met his burden to mitigate 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 ¶ 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

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.

DAVID M. WHITE
Administrative Judge