



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



In the matter of:)
)
) ISCR Case No. 14-04563
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

04/27/2015

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the drug involvement security concerns, but he did not mitigate the personal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

The Department of Defense (DOD) issued an undated Statement of Reasons (SOR) to Applicant that was forwarded to him on October 10, 2014. The SOR detailed security concerns under Guidelines E (personal conduct) and H (drug involvement). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on November 9, 2014, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on December 29, 2014. On January 12, 2015, a complete copy of the file

of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on February 11, 2015. As of April 23, 2015, he had not responded. The case was assigned to me on April 27, 2015. The Government exhibits included in the FORM (Items 4-6) are admitted.

Findings of Fact

Applicant is a 24-year-old employee of a defense contractor. He has worked for his current employer since August 2012. He has a bachelor's degree, which was awarded in 2012. As of March 2014, he was unmarried without children.¹

Applicant graduated high school in 2008. He smoked marijuana on one occasion that summer with some friends. He started college in the fall of 2008. During his first semester, he smoked marijuana on one occasion with some fellow college students.²

Applicant obtained a job with a defense contractor in 2011, and he submitted a Questionnaire for National Security Positions (SF 86) in July 2011.³ He answered "No" to all the drug questions, including Section 23a, which asked:

In the last 7 years, have you illegally used any controlled substance, for example, cocaine, crack cocaine, THC (*marijuana, hashish, etc.*) narcotics (*opium, morphine, codeine, heroin, etc.*), stimulants (*amphetamines, speed, crystal methamphetamine, Ecstasy, ketamine, etc.*) depressants (*barbiturates, methaqualone, tranquilizers, etc.*), hallucinogenics (*LSD, PCP, etc.*), steroids, inhalants (*toluene, amyl nitrate, etc.*) or prescription drugs (*including painkillers*)? Use of a controlled substance includes injecting, snorting, inhaling, swallowing, experimenting with or otherwise consuming any controlled substance.⁴

Applicant was granted a DOD security clearance in October 2011. His job with the defense contractor ended in December 2011. In early 2012, Applicant smoked marijuana on one occasion with some friends. He did not have an active security clearance at the time because he was unemployed.⁵

Applicant stated that he does not intend to use marijuana, or any other illegal drug, in the future. He indicated that it is dangerous to his health, and it could adversely

¹ Items 4-6.

² Items 3, 5, 6.

³ Items 4-6.

⁴ Item 5.

⁵ Items 3, 4, 5.

affect his job. He understands that he cannot use marijuana and hold a security clearance.⁶

Applicant submitted another SF 86 in January 2014. He fully disclosed his marijuana use on that questionnaire. He also discussed his marijuana use during his background interview in March 2014.⁷

Applicant denied intentionally providing false information about his marijuana use on his 2011 SF 86:

I admit to unknowingly falsifying material facts under Section 23 on an [SF 86] signed by me on July 19, 2011. This was not intentional on my part as I must have answered the question before I had a full understanding of it, and if I fully understood the question, I would have answered with an affirmative “yes” as I did on the second [SF 86] signed by me on January 14, 2014.⁸

Having considered all the evidence, including Applicant’s education, his answers to other questions on the SF 86, the straightforward wording of the question, and Applicant’s motive to conceal the information, I find that he intentionally falsified the SF 86. Having done so, I also find that his response to the SOR was intentionally false when he denied intentionally falsifying the SF 86.⁹

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 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 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

⁶ Items 3, 4, 6.

⁷ Items 4, 6.

⁸ Item 3.

⁹ Applicant’s false statement in his response to the SOR will not be used for disqualification purposes. It may be used in assessing Applicant’s credibility, in the application of mitigating conditions, and during the whole-person analysis.

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.”

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 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 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

The security concern 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.

The guideline notes conditions that could raise security concerns under AG ¶ 25. The disqualifying conditions potentially applicable in this case include:

- (a) any drug abuse;¹⁰

¹⁰ Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

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

(g) any illegal drug use after being granted a security clearance.

Applicant possessed and used marijuana. He did not have an active security clearance when he smoked marijuana in 2012, but the use did occur after he was granted a security clearance in 2011. AG ¶¶ 25(a), 25(c), and 25(g) are all applicable.

AG ¶ 26 provides conditions that could mitigate security concerns. 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;

(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.

Applicant experimented with marijuana on three occasions before he graduated from college in 2012. It has been more than three years since he smoked marijuana. I find that he has abstained from marijuana use for an appropriate period, and that illegal drug use is unlikely to recur. AG ¶¶ 26(a) and 26(b) are applicable.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant intentionally provided false information about his marijuana use on his 2011 SF 86. AG ¶ 16(a) is applicable.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant fully disclosed his marijuana use on his January 2014 SF 86. He also discussed his marijuana use during his background interview in March 2014. However, having determined that Applicant intentionally provided false information on his 2011 SF 86, I have also determined that he provided false information when he denied the omission was intentional. It would be inconsistent to find the conduct mitigated.¹¹

¹¹ See ISCR Case No. 03-22819 at 4 (App. Bd. Mar. 20, 2006), in which the Appeal Board reversed the Administrative Judge's decision to grant the applicant's security clearance:

Once the Administrative Judge found that Applicant deliberately falsified a security clearance application in September 2002, the Judge could not render a favorable security clearance decision without articulating a rational basis for why it would be clearly consistent with the national interest to grant or continue a security clearance for Applicant despite the falsification. Here, the Judge gives reasons as to why he considers the falsification mitigated under a "whole person" analysis, namely that Applicant has matured, has held a position of responsibility, recognizes how important it is to be candid in relation to matters relating to her security clearance, and has changed her behavior so that there is little likelihood of recurrence. However, the Judge's conclusion runs contrary to the Judge's rejection of Applicant's explanations for the security clearance application falsification. At the hearing (after earlier admitting the falsification in her March 2003 written statement to a security investigator), Applicant testified that she had not

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. I have incorporated my comments under Guidelines E and H in this whole-person analysis.

I am satisfied that Applicant's marijuana use is in the past. However, he intentionally provided false information about his marijuana use on his 2011 SF 86. There are concerns about his judgment, honesty, and willingness to comply with rules and regulations.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the drug involvement security concerns, but he did not mitigate the personal 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
Subparagraphs 1.a-1.b:	For Applicant

intentionally falsified her application. Given the Judge's rejection of this explanation as not being credible, it follows that the Judge could not have concluded Applicant now recognizes the importance of candor and has changed her behavior.

Paragraph 2, Guideline E:	Against Applicant
Subparagraph 2.a:	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.

Edward W. Loughran
Administrative Judge