



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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-----) ISCR Case No. 14-05460
)
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

07/31/2015

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant mitigated the security concerns regarding his use of drugs. Eligibility for access to classified information is granted.

History of Case

On December 15, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the affirmative determination of eligibility for a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken 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* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AGs) implemented by DOD on September 1, 2006.

Applicant responded to the SOR on February 5, 2015, and requested a hearing. The case was assigned to me on May 7, 2015, and was scheduled for hearing on June

16, 2015. At hearing, the Government's case consisted of two exhibits (GE 1-2). Applicant relied on one witness (himself) and no exhibits. The transcript (Tr.) was received on June 24, 2015.

Before the close of the hearing, Applicant requested the record be kept open to permit him the opportunity to supplement the record with a statement of intent not to use illegal drugs, awards, and a letter of endorsement. For good cause shown, Applicant was granted seven days to supplement the record. The Government was afforded two days to respond.

Within the time permitted, Applicant submitted a statement of intent not to use illegal drugs, awards, and a letter of endorsement. Applicant's submissions were admitted as AEs A-C.

Summary of Pleadings

Under Guideline H, Applicant allegedly used (a) marijuana approximately 20 times between December 2010 and January 2014 and (b) Adderall without a prescription approximately one time in June 2012.

In his response to the SOR, Applicant admitted each of the allegations pertaining to his use of illegal and non-prescribed drugs. He claimed that his use of marijuana and Adderall happened under such circumstances that it was extremely unlikely to recur and should not cast doubt on his current reliability, trustworthiness, or good judgment. Applicant claimed to have disassociated himself from drug-using acquaintances and contacts. He claimed he limited his marijuana use to group settings and never purchased any illegal substances.

Applicant further claimed in his response that he has abstained from his one-time partial dose of Adderall for three years and has abstained from his use of marijuana for one year. And he claimed to have disassociated himself from persons who use illegal drugs, and is willing to sign a statement of intent with automatic revocation of clearance for a violation.

Findings of Fact

Applicant is a 26-year-old senior analyst for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Background

Applicant has never been married and has no children. (GE 1) He earned a bachelor's degree in computers and digital forensics in May 2011. (GE 1; Tr. 16-17) Applicant has been employed by his current employer since August 2012 and claims no military service. (GEs 1-2; Tr. 17) His work with his employer includes government contract work that requires a security clearance. (Tr. 18)

Drug history

Applicant presents with some past drug use history. Between December 2010 and January 2014 (some in college and some beyond college), he smoked marijuana between 10 and 20 occasions with friends and acquaintances. (GEs 1 and 2; Tr. 19-20) He confined his marijuana use to group gatherings with friends and acquaintances, and never became an active user of the substance. (GEs 1 and 2; Tr. 19-20, 31-32)

Applicant estimated to have used marijuana in college on no more than three occasions, with the balance of his use occurring in social gatherings after college. (Tr. 20) He assured he has not used marijuana since his last use in January 2014, and has not attended any social gatherings where marijuana was used since late Summer 2014. (Tr. 27-28)

Applicant never purchased marijuana for his personal use, or for others, and never transported, trafficked in or sold marijuana to anybody, and never took marijuana home with him. (Tr. 23-24, 32) He has never been drug-tested by his employer and is unsure whether or not his employer has an anti-drug policy (Tr. 25-26) Applicant assured he has no intention of using marijuana or any illegal substance in the future and indicated his willingness to “sign a statement of intent with automatic revocation of clearance for a violation.” (AE A; Tr. 41-42) He has matured since completing college and wants to take advantage of the many channels and opportunities open to him with his employer. (Tr. 41) He has received several promotions since joining his current employer and exercises oversight responsibility over others.

Besides his experimenting with marijuana, Applicant tried the prescription drug of Adderall without a prescription on a single occasion in June 2012. (GEs 1-2; Tr. 33-34) He tried it once at a social gathering, and not for the purpose of enhancing his ability to focus. (GEs 1-2; Tr. 34-35)

Applicant has never received drug counseling or attended any drug treatment program. (Tr. 25, 38) He sees no need to seek counseling or treatment. He currently has a girlfriend who does not use illegal drugs and resides with a roommate who doesn't use drugs. (Tr. 27, 40) In a post-hearing submission, Applicant expressed his intent not to use illegal drugs in the future. (AE A) His statement is credible and accepted.

Endorsements and awards

Applicant is well-regarded by his senior manager who has worked with Applicant for over three years and currently serves as his counselor at the firm. (AE C) Applicant's manager has direct oversight over Applicant's work and receives feedback from the managers, supervisors, and clients he works with. His manager credited Applicant with producing quality work in a consistently timely way and characterized him as a very dedicated go-to resource who can be relied on and trusted. (AE C) Applicant has earned four recognition awards from his employer that commend him for his service to the firm. (AE B)

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering security clearance cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. The AGs include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns." They must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c)

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person.

The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. The following AG ¶ 2(a) factors are pertinent: (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.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Drug Involvement

The Concern: 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 ¶ 24.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive

requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. “[S]ecurity-clearance determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Applicant experimented with marijuana in college and for several years after college. He estimates to have used the substance on 10 to 20 occasions between December 2010 and January 2014 in social gatherings, but he never purchased the substance for himself or others and never sold or trafficked in marijuana. Besides his limited marijuana use, he also tried Adderall on one occasion without a prescription in a social setting. Applicant was never counseled or tested for drugs by his employer and is uncertain whether his employer has an anti-drug policy.

On the strength of the evidence presented, several disqualifying conditions of the Adjudicative Guidelines for drug abuse are applicable: DC ¶ 25(a), “any drug abuse,” DC ¶ 25(c), “illegal possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia,” and DC ¶ 25(g), “any illegal drug use after being granted a security clearance.” Judgment concerns exist over Applicant’s past drug use. He has some recurrent history of marijuana use on a limited scale and less than four years of demonstrated abstinence.

Considering the limited nature of Applicant’s marijuana use, his relative youth when using the substance and gained maturity, and his credible expression of intent not to use marijuana or any other illegal drug in the future, enough time has elapsed to facilitate safe predictable judgments that he will not return to illegal drug use in the

foreseeable future. Pertinent mitigating conditions covered by AG ¶ 24 are available to Applicant. MC ¶ 24(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 MC ¶ 24(b), “a demonstrated intent not to use any drugs in the future, such as (1) disassociation from drug-using associates and contacts, (3) an appropriate period of abstinence,” and (4) “a signed statement of intent with automatic revocation of clearance for any violation,” apply to Applicant’s limited use of marijuana.

Applicant is credited with good judgment and reliability by his supervisor who has worked closely with Applicant for over three years and no longer has any contact with friends and acquaintances who used marijuana. Safe predictable judgments, accordingly, can be made about his ability to avoid recurrent drug involvement.

From a whole-person perspective, Applicant has established independent probative evidence of his limited use of marijuana and unlikelihood of ever resuming his use of the substance. He has provided an endorsement from his direct supervisor to soften or mitigate any of the drug and judgment concerns associated with his past use of marijuana in college and for several years after college in social gatherings. Applicant’s own acknowledgment of poor judgment and disassociation of contacts with friends and acquaintances with whom he shared marijuana help to reinforce favorable conclusions about his overall judgment, reliability and trustworthiness.

Taking into account all of the facts and circumstances surrounding Applicant’s limited drug use and judgment lapses, Applicant mitigates security concerns related to his drug use. Favorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a and 1.b of Guideline H.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE H: (DRUG INVOLVEMENT): FOR APPLICANT

Sub-paras. 1.a-1.b: FOR APPLICANT

Conclusions

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant’s security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge

