



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



In the matter of:)	
)	
)	ISCR Case No. 14-05601
)	
Applicant for Security Clearance)	

Appearances

For Government: David Hayes, Esquire, Department Counsel
For Applicant: *Pro se*

11/25/2015

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is granted.

Statement of the Case

Applicant completed, signed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on November 26, 2011. The Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) on December 5, 2014, detailing security concerns under Guideline H, drug involvement. 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 for Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR on January 15, 2015, and he answered it on February 2, 2015. A hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA) was requested. Department Counsel was prepared to proceed on July 31, 2015, and I received the case assignment on August 25, 2015. DOHA issued a Notice of Hearing on September 2, 2015, and I convened the hearing as scheduled on September 24, 2015. The Government offered exhibits (GE) marked as GE 1 and GE 2, which were received and admitted into evidence without objection. Applicant and two witnesses testified. He submitted exhibits (AE) marked as AE A and AE B, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on October 2, 2015. I held the record open until October 8, 2015, for Applicant to submit additional matters. Applicant timely submitted AE C, which was received and admitted without objection. The record closed on October 8, 2015.

Procedural Ruling

Notice

Applicant received the notice of the date, time and place of the hearing less than 15 days before the hearing. I advised Applicant of his right under ¶ E3.1.8. of the Directive to receive the notice at least 15 days before the hearing. Applicant affirmatively waived this right under the Directive. (Tr. 9.)

Findings of Fact

In his Answer to the SOR, Applicant admitted all the factual allegations in the SOR. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 41 years old, works as a technical recruiter for a DOD contractor. He began his current employment in March 2013. The owner of the company where he works testified on Applicant's behalf. He was aware that the hearing concerned drug use by Applicant, but he was not aware of the nature of Applicant's drug use. Applicant does an outstanding job for the company and is very professional. Applicant is honest with the recruits and is solid on integrity. Another co-worker and friend testified for Applicant. On a professional level, Applicant is incredibly sharp, pays attention to detail, and demonstrates lots of energy and drive. He, Applicant, and their families socialize outside of work. He describes Applicant as a great guy. This witness was not aware of the reason for the hearing or Applicant's drug use.¹

Applicant enlisted in the military in 1992 after completing high school. He served in the military until 2011, when he retired on disability. Applicant's military occupational specialties (MOS) included infantry (11-B) and recruiter (79-R). He rose to the rank of Sergeant First Class (pay grade E-7). During his years of service, he received six Good

¹GE 1; Tr. 16, 53-65.

Conduct Medals, three Commendation Medals, two Achievement Medals, Superior Unit award, two National Defense Service Medals, an Afghanistan Campaign Medal with Arrowhead, an Iraq Campaign Medal with Arrowhead, Global War on Terrorism Medal, and many other ribbons and awards. He served in Iraq and Afghanistan. Just prior to his retirement, he received a Letter of Appreciation from a federal agency for his work. He was never disciplined while serving in the military. Since his retirement in 2011, Applicant has provided volunteer work for a military family readiness group. He has received two Letters of Appreciation and a Gold Presidential Volunteer Service Award for his work.²

Applicant married his first wife in 1994, and they divorced in 2010. They had no children. He married his current wife in 2010. They have two sons, ages four and two. Applicant received his bachelor's degree in business administration in August 2012. Applicant has never been arrested or charged with a criminal offense, although he was arrested for excessive speed once. He has not been fired from a job.³

Between 1994 and 2000, Applicant and his first wife moved a lot. He described this time as not a stable time. In 2000, his life became more stable. He and his first wife began experimenting with various illegal drugs. He was 26 years old when he started this conduct. Over the next nine years, he tried a variety of drugs when he was off duty. He never used illegal drugs while on duty, nor did his recreational use of drugs impact his work performance. He held a security clearance at that time.⁴

Applicant outlined in his e-QIP the illegal drugs he tried or used between 2000 and 2009. He used methamphetamine from 2000 until 2005 about 15 to 20 times total. He used ecstasy and cocaine five times in nine years. He smoked marijuana three times in nine years. He did not like marijuana. He used steroids to enhance his performance on three separate occasions. He explained that steroids are taken in 30-day, 60-day or 90-day cycles. The drug was readily available in his gym. He did a 30-day cycle in 2004, 2007, and 2008. He last used an illegal drug in 2009. Between January 2009 and April 2010, he purchased Spice, a synthetic cannabis, when it was legal. When Spice became illegal, he stopped purchasing it. Based on these facts, Applicant's overall use of illegal drugs was limited to sporadic use. He has not been treated for drug abuse or drug dependence.⁵

Sporadic use of drugs became a lifestyle for Applicant and his first wife. They belonged to a party group. They purchased some of the drugs they used from two friends in the group. Applicant never used any drugs while on duty or while on base. He did not use drugs in Iraq or Afghanistan. His use occurred when he was on leave and at

²GE 1; GE 2; AE A; Tr. 16-17.

³GE 1.

⁴Tr. 18-20, 34-36.

⁵GE 1; Tr.19-26,

home or at the home of friends. Applicant described his first marriage as a toxic environment in which he made poor decisions. After 13 years of marriage, he decided it was time to end their lifestyle. He has not seen his first wife since they signed their divorce papers nor has he seen the two party friends from whom he purchased some of the drugs since 2009.⁶

Applicant described his use of illegal drugs as irresponsible to himself and to the uniform. His actions were reckless, and he always knew that drug use was inappropriate. Even so, he separated his on-duty conduct from his off-duty conduct. He held himself to two separate standards during this time. He never failed a drug test while in the military. His current wife wants no part of drugs, and he understood this fact when they married. He agrees. He wants to be a good role model for his sons. His drug use is in the past.⁷

Applicant provided a copy of a voluntary drug test taken on September 16, 2015. While the test showed many negative results, it also indicated a positive result for opiates. Attached to the test result report is a list of drugs taken by Applicant and provided to the testing site. Applicant listed hydrocodone (norco/vicodin (opiate)) for back pain; diclofenac (voltaren) and tizanidine (zanaflex) for muscle spasms, atorvastatin (lipitor) for cholesterol, methylphenidate (ritalin) and concerta for attention deficit disorder, fluticasone (flonase) nasal spray, lisinopril-hydrochlorothiazide (prinzipide, zestoretic) for hypertension, lamotrigine (Lamictal) for bipolar disorder, lidocaine patches for pain, and lunesta for sleep. His physician confirmed these drugs are part of his current medication regiment. The lunesta for sleep has been replaced by ambien. In addition to the above drugs, he also takes Latuda for bipolar disorder and Lorazepam (ativan) for anxiety. Applicant takes hydrocodine, lorazepam, and Tizanidine as needed. The remaining drugs are taken daily. Applicant is being treated for back pain, shoulder reconstruction, left ankle and tibiofibular breaks as well attention as deficient disorder, high cholesterol, hypertension, and allergies.⁸

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 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 the adjudicative process. The administrative judge's overarching

⁶Tr. 19-20, 26-27, 32, 42-43, 46, 48.

⁷Tr. 19-20, 23, 28-29, 36-39, 47, 49.

⁸AE B; AE C; Tr. 29-32.

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, an applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” An applicant has the ultimate burden of persuasion for obtaining 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 an 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 Executive Order 10865 provides that 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.

(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:

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

(b) testing positive for illegal drug use;

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

(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence;

(e) evaluation of drug abuse or drug dependence by a licensed clinical social worker who, is a staff member of a recognized drug treatment program;

(f) failure to successfully complete a drug treatment program prescribed by a duly qualified medical professional; and

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

Between 2000 and 2009, Applicant used a variety of illegal drugs. He did not use these drugs on a daily, weekly, or monthly basis with the exception of his three cycles of steroid use. To use these drugs, Applicant had to possess them. He also purchased some of the drugs from friends. He used or experimented with these drugs while holding a security clearance. A security concern has been established under AG ¶¶ 25(a), 25(c), and 25(g).

The record lacks any evidence that Applicant failed a drug test at work or in the military or that Applicant has been diagnosed by a qualified medical professional with drug abuse or drug dependence. The September 2015 drug test results were positive for opiates. Applicant takes hydrocodone, an opiate, on an as-needed basis and under the supervision of a medical professional. The record lacks any evidence that he is abusing this prescription drug. A security concern has not been established under AG ¶¶ 25(b), 25(d), 25(e), or 25(f).

The drug involvement guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 26(a) through ¶ 26(d), and 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 stopped his illegal drug use in 2009 by his own choice. He used Spice for a short time, when its purchase was legal. When Spice became illegal, he stopped his use in 2010. Applicant has not experimented with illegal drugs in more than five years, and he does not intend to do so in the future. His drug use was part of his first marriage as he and his first wife socialized with friends who used illegal drugs for recreation. He has not seen his first wife or their friends since 2009 or early 2010. His current wife opposes drug use, and he agrees. While he has not signed a statement of intent not to use illegal drugs, he understands that his current wife will not accept the use of illegal drugs as part of their marriage. His current abstinence, his disassociation from drug users, and his new marital and work environments affirm his intent to put his sporadic drug use behind him. He has mitigated the security concerns about his past drug use.

Applicant's decision at age 26 to start experimenting with illegal drugs while holding a security clearance shows poor judgment and impacts his trustworthiness. Applicant has been forthcoming about his drug use throughout this clearance process. He acknowledges his poor judgment and reckless behavior. He made no excuses for thinking he could have two standards - one for on-duty conduct and one for off-duty conduct - for using drugs. The Government learned about Applicant's drug use because he told the Government about it on his e-QIP. I consider the use of illegal drugs while holding a security clearance a breach of the trust given to an Applicant and a serious lack of good judgment. Applicant did both. However, he also acknowledged his conduct, and he has been forthcoming about it and his failures. Having reviewed his credible testimony and all the evidence in this record, I conclude that Applicant has mitigated the security concerns raised about his past drug use.

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 an 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant made a serious error in judgment when he decided, at age 26, to experiment with or use, over a number of years, illegal drugs including ecstasy, cocaine, marijuana, steroids, and methamphetamine. While he did not use illegal drugs on a regular basis, he violated the Government's trust when he decided to ignore the rules and occasionally use illegal drugs off duty. He recognized that even though he never used illegal drugs while on duty or on base, he was wrong in deciding it was okay for him to use illegal drugs off duty. Applicant has taken responsibility for his conduct and has been forthcoming about his drug use.

Applicant decided to change his lifestyle about six years ago and did. He stays away from illegal drugs. His abstinence is part of an understanding with his current wife. His young sons provide another reason for him to remain abstinent. He suffers from multiple medical problems, which are being treated. The management of his medical problems includes a number of prescription drugs, including one opiate. Applicant complies with the drug protocol established by his physician to treat his conditions. He works hard and is recognized at his job for his professionalism and his work ethic. After

weighing all the evidence of record and considering Applicant's credible testimony at the hearing, I conclude that Applicant should be granted a security clearance.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his drug involvement under Guideline H.

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:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	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 a security clearance is granted.

MARY E. HENRY
Administrative Judge