



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



In the matter of:)	
)	
)	ISCR Case No. 14-06737
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: John Berry, Esq.

12/02/2015

Decision

LYNCH, Noreen A, Administrative Judge:

On May 15, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline H (Drug Involvement). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. A notice of hearing was sent on September 3, 2015, scheduling the hearing for October 29, 2015. The Government submitted two exhibits (GX 1-2), which were admitted into the record. Applicant submitted 11 exhibits (A-K), which were admitted into the record and presented the testimony of two witnesses. Based on a review of the case file, submissions, and exhibits, I find Applicant met his burden regarding the security concerns raised. Security clearance is granted.

Findings of Fact

In his answer to the SOR, Applicant admitted the factual allegations under Guideline H (Drug Involvement) with explanations.

Applicant is a 31-year-old senior engineer with a defense contractor. He received his undergraduate degree in 2007, and his master's in 2008. (AX) Applicant is not married and has no children. He has worked for his current employer since 2010. Applicant has held a security clearance since 2008. (Tr. 18) He completed his recent security clearance application (SCA) on April 18, 2014. (GX 1)

Drug Involvement

In June 2013, Applicant used a prescription medication (Lorazepam) without a prescription. At that time, he held a security clearance. He explained that he experienced a panic attack while arguing with his girlfriend. He recalls feeling frightened, short of breath, and a burning sensation in his chest, and took a single pill. (GX 2) He knew that his girlfriend had medication and he took the pill from the medicine cabinet in their home. (Tr. 21) He understood this medication to be fast acting and thought it would help the panic attack. (AX A) He has never used illegal drugs. He did not experience any feelings of being "high." He takes full responsibility for his action. (Tr. 22)

In January 2014, Applicant used a prescription medication (Prozac) without a prescription on multiple occasions. At that time, he held a security clearance. He used the medication for about one month before he had an appointment with his psychiatrist. He again used his girlfriend's medication because he thought it would "speed things" up. He knew from his girlfriend that this medication took a few weeks to be in the system before one could feel any positive change. (Tr. 24)

Applicant receives individual psychotherapy from a licensed clinical psychologist on a bi-weekly basis. He began treatment in May 2013. Dr. G has diagnosed Applicant with anxiety disorder not otherwise specified (DSM-IC 300.00). Dr. G notes that Applicant is now more self-aware and effective in his communications. He is "extremely conscientious and strives to make decisions about his life in responsible and thoughtful ways." (AX K) In June 2015, Dr. G noted the prognosis for Applicant is excellent. He has tools to manage his life in a positive way. She also recommended that he supplement the talk therapy with some medication and referred him to a psychiatrist who could prescribe an anti-anxiety medication.

Applicant sought the help of a psychiatrist who could prescribe anti-anxiety medication for him in February 2014. He continues under her care. He is compliant with his prescribed medication. (Lexapro) (AX K)

Applicant signed a Letter of Intent, dated October 26, 2015, stating that he has no intent to use an illegal substance in the future, and if he should there be a violation

with regard to illegal drug use, Applicant would consent to an automatic revocation of his security clearance. (AX G)

Applicant disclosed the information about his misuse of prescription drugs on his 2014 SCA. He detailed when and why he used the anxiety medications and listed the mental health providers that he sees. (GX 1) He explained that the combination of talk therapy and medication allows him to maintain an “emotional intelligence” and reduces his overall level of anxiety.” (Tr. 23) He has been stable on this medication for two years.

Applicant explained that due to effective treatment, he has no desire to fall victim to taking another prescription that he has not been prescribed. (Tr. 31) He notices a difference in his daily life. He feels healthier and feels great at work. In fact, he has been awarded a certificate of merit (AX D) in 2015. He was also nominated for acceptance into a specialized training project. (AX E) Applicant has also been recognized for his performance by invitation to a special research project. (AX F)

Applicant presented the testimony of two witnesses who each attest to Applicant’s strong work ethic. They have known him respectively for two years, and twelve years. Applicant is a person who follows rules. Each witness knew of the security clearance issue at hand. (Tr. 58) Applicant is described as trustworthy and direct.

Applicant submitted three letters of recommendation. A team leader described Applicant as passionate and dedicated to his work. He is an independent and reliable engineer. (AX A) A friend of Applicant’s who has known him since college, describes him as a trustworthy and close confidant. He has achieved much academically and professionally. He holds Applicant in high esteem. (AX B) A colleague describes Applicant as a person of good moral character. He is aware of the issues concerning the security clearance. He recommends Applicant for a clearance. (AX C)

Policies

When evaluating an applicant’s suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” An 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The United States Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”¹ The burden of proof is something less than a preponderance of evidence.² The ultimate burden of persuasion is on the applicant.³

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 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 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.”⁴ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline H, Drug Involvement

AG ¶ 24 expresses the security concern pertaining to drug involvement:

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

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;

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

(h) expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use.

Applicant admitted his intentional use of a prescription medication, Lorazepam, without a prescription on one occasion, (June 2013) after being granted a security clearance. He also used another prescription medication in June 2014 (Lexapro) for about a month. AG¶ 25(a) and (g) apply.

AG ¶ 26 provides conditions that could mitigate security concerns:

(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's last use of a prescription medication that was not his was in 2014. He sought counseling with a psychologist. He continues the treatment. He also takes medication for his diagnosed anxiety condition. He is compliant with his medication. His prognosis is excellent. He takes full responsibility for his actions. He is self-aware and has insight into his condition. He states that he has not used any I drugs. He signed a letter of intent. He states that he used the medications due to his panic attack. He has excelled at work and has favorable recommendations. He understands that he made a mistake. He disclosed his conduct in his SCA. I find that he has mitigated the security concern under Guideline H.

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 the 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 31 years old. He has held a security clearance since 2008. He has excellent recommendations from supervisors and co-workers. They attest to his character and dedication to work. He submitted a Letter of Intent. He has an excellent prognosis from his therapist. He is compliant with his medication. He has been in therapy since 2013. He continues to see both a psychologist and a psychiatrist. He accepts responsibility for his actions. He disclosed the use of the medication that was not prescribed for him in his 2014 security clearance application.

Applicant used a prescription medication that was not prescribed for him in 2013 on one occasion. He had a panic attack and used a drug from the medicine cabinet that belonged to his girlfriend. He had a security clearance for a number of years. He attended therapy but before he was able to get medication from a psychiatrist he used his girlfriend's medication for a month in 2014. Applicant submitted sufficient information and evidence to mitigate the security concerns raised in his case. Applicant has accepted responsibility for his actions. It appears that this happened under circumstances that will not recur in the future. Accordingly, Applicant has mitigated the 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

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 a security clearance. Clearance is granted.

NOREEN A. LYNCH.
Administrative Judge