



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 14-06925
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

January 29, 2016

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant mitigated the drug and personal conduct security concerns that arose out of his infrequent marijuana use from July 2010 to January 2014. Applicant has been candid with the Department of Defense about his illegal marijuana use, and does not intend to use any illegal drugs, including marijuana, in the future. Eligibility for access to classified information is granted.

Statement of the Case

On April 28, 2014, Applicant submitted an electronic Questionnaires for Investigations Processing (e-QIP). On July 24, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H, Drug Involvement, and Guideline E, Personal Conduct. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified 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 (AG) effective after September 1, 2006.

Applicant responded to the SOR (Answer) on August 24, 2015, and requested a hearing before an administrative judge. The case was assigned to me on October 20, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 4, 2015, and the hearing was convened as scheduled on December 16, 2015. The Government offered Hearing Exhibit (HE) I and Government Exhibit (GE) 1, which was admitted without objection. Applicant offered exhibits (AE) A through E. Applicant testified on his own behalf. DOHA received the hearing transcript (Tr.) on December 28, 2015.

Findings of Fact

Under the guidelines for Drug Involvement and Personal Conduct, the SOR alleged that Applicant used marijuana, with varying frequency, from approximately July 2010 to January 2015; and that he used marijuana after he was granted a security clearance. In his Answer and during his testimony, Applicant admitted these allegations, with clarifications.

Applicant is 37 years old. He earned a bachelor's degree in 1999 and a master's degree in 2001. After graduating with his master's degree he went to work for a U.S. government intelligence agency. He left that job in June 2010 voluntarily and went to work in the private sector. He remained in the private sector, in various positions, until April 2014, when he was hired by his current employer, a government contractor. He is married and has one minor child. (GE 1; Tr. 18-19.)

Applicant held a security clearance while working for the government intelligence agency from 2002 to June 2010. Documentation from the Office of Personnel Management shows he was debriefed from access to sensitive compartmentalized information (SCI) on June 22, 2010. He understood from his debriefing that he ceased to hold a security clearance at that time. (GE 1; AE A; AE B; Tr. 18, 21-23.)

On Applicant's e-QIP, he indicated he used marijuana between July 2010 and January 2014 "approximately 10 times." He also indicated that he did not intend to use marijuana in the future. (GE 1; AE A; Tr. 20-21.)

Applicant testified his infrequent marijuana use occurred in social settings with acquaintances only after he left his government job and no longer held a security clearance. He was a serious student throughout his educational pursuits and did not experiment with illegal drugs during college. He indicated that he estimated his marijuana use as ten times on his SCA, but that after taking the time to specifically recall each marijuana use, he believes he only tried it six times. Those include: once in July 2010; once in February 2013; once in August 2013; once in September 2013; once

in October 2013; and once in December 2013. He classified his marijuana use as experimental and indicated that he tried the marijuana in different forms like smoking it in a cigarette, vaporizer, and edible marijuana, but that he did not like using it. He no longer socializes with drug-using acquaintances. He consciously decided to stop using marijuana in 2014, prior to being offered a job with a government contractor because it was unhealthy and unlawful. He expressed remorse over his decision to use marijuana and stated his solid commitment to abstain from future drug use in writing. (AE 1; Tr. 17-40.)

Applicant presented seven letters of recommendation from former and current supervisors and co-workers. While each of the letter's authors were informed of the Applicant's marijuana use, they all recommend him for a security clearance based upon his reliability, trustworthiness, and good judgment. His former supervisor in his previous government position noted: "During his time at the Agency his work ethic was impeccable; he was a class leader, chosen by his peers, during the training program; and his handling of classified information, including SCI and compartmented information, was beyond reproach." The letters also attest that Applicant is a man of his word, and that his promise not to use marijuana in the future is credible. (AE E.)

Applicant's performance appraisals reflect that he is an excellent employee. (AE C; AE D.) He also is active in his community and raises money for non-profit groups, as well as serving on as a board member for a non-profit group. (Tr. 32.)

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 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

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.

I have considered all of the disqualifying conditions under Drug Involvement AG ¶ 25, and the following is potentially applicable:

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

The Government presented sufficient information to support the factual allegation under Guideline H. Applicant used marijuana approximately six times between 2010 and December 2013. While he did not possess an active security clearance at the time he used marijuana, he did technically use marijuana after having been granted a security clearance. The facts established through the Government’s evidence and through Applicant’s admissions raise security concerns under the above disqualifying condition.

I have considered the mitigating conditions under Drug Involvement AG ¶ 26, and the following is potentially applicable:

(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.

While Applicant's illegal drug use spanned a three-year period, and technically occurred after possession of a security clearance, Applicant has made a number of significant changes in his life during the past two years that demonstrate his serious commitment to abstain from illegal substances. He recognized that he was wrong to use marijuana. He ceased using all drugs prior to reapplying for a security clearance. He no longer associates with drug-using friends and associates. He confessed his illegal drug use to his former and current supervisors. Applicant's drug use occurred while he was attending social gatherings with acquaintances and he no longer attends such gatherings. Thus, he has changed his environment. While the Directive does not define what constitutes "an appropriate period of abstinence" under AG ¶ 26(b)(3), his candor about his drug abuse and the statements from those who wrote letters on his behalf leads me to accept as credible his assertions that he has no future intent to use any illegal substance under any circumstances. Applicant has demonstrated sufficient intent not to use any illegal drugs in the future. He signed a statement indicating he would not use drugs again. He has matured and understands that any illegal drug involvement is incompatible with his defense contractor employment. Applicant has presented sufficient evidence to mitigate the Government's concerns under AG ¶ 26(b).

Personal Conduct

The security concern for the Personal Conduct guideline is set out in AG ¶ 15:

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:

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

Applicant's illegal drug use could potentially create a vulnerability to exploitation, manipulation, or duress. AG ¶ 16(e) applies.

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

(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; and

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

Applicant acknowledged his illegal drug use and is committed to abstinence. Future unreliable, inappropriate, and illegal behavior is unlikely to occur. His candor with the government and with his past and present supervisors, concerning his drug use makes it unlikely that he would be vulnerable to exploitation or manipulation with respect to his prior drug use. AG ¶ 17(c) and 17(e) apply.

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's infrequent but illegal drug use occurred six times. He was irresponsible at the time and did not recognize the seriousness of his actions, despite holding a security clearance in the past. He has now matured. He has not used illegal substances for two years after recognizing that his drug use was unhealthy and criminal. His behavioral changes are

permanent and the likelihood of recurrence is extremely low. 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 is eligible to be granted a security clearance.

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
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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.

JENNIFER I. GOLDSTEIN
Administrative Judge