



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



In the matter of:)	
)	
-----)	ISCR Case No. 14-06967
)	
Applicant for Security Clearance)	

Appearances

For Government: Andre Gregorian, Esquire
For Applicant: Eric A. Eisen, Esquire

05/18/2016

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On June 10, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H (Drug Involvement).¹ Applicant answered the SOR on July 20, 2015. He admitted three of the four allegations raised and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned the case on October 28, 2015. DOHA issued a notice of hearing on November 6, 2015, setting the hearing for November 24, 2015. The hearing was convened as scheduled.

The Government offered two documents, accepted without objection as exhibits (Exs.) 1-2. Applicant offered testimony and five documents, accepted as Exs. A-E. The record was kept open for 30 days in the event the parties wished to submit additional materials. The transcript (Tr.) was received on December 4, 2015. With no additional materials received, the record was closed on December 24, 2015.

¹ The action was taken under Executive Order 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 within the DOD on September 1, 2006.

Findings of Fact

Applicant is a 25-year-old software adjuster who has worked for the same defense contractor for about two years. In secondary school, he was active with sports and other extracurricular activities. In late 2013, he graduated from college, earning a bachelor's degree in computer information.² (Tr. 18) He is single and has no children. He admitted his past drug use in his 2014 security clearance application (SCA).

Applicant first used marijuana, an illegal drug, when he was a freshman or sophomore in secondary school. (Tr. 18, 39) At his school, marijuana was readily available, and a substantial number of students used it and drank beer. Applicant used both "rarely . . . [a] couple times a month" (Tr. 20, 40)

At university, where the drug was also prevalent, he again used marijuana "occasionally." (Tr. 21) He estimates that he used it "a couple, or a few times a month," usually outdoors, and almost always with his circle of friends over alcoholic beverages at parties. (Tr. 46, 59) He never drove while using alcohol or marijuana. As in high school, he would pool his money with "a few school buddies" to purchase and evenly divide the marijuana purchase, usually obtaining about an ounce of the drug.³ (Tr. 22-23) Sometimes Applicant would be the purchaser on behalf of the group, buying the drug from a peer or other collegiate school source. At other times, another of his peers would make the purchase. Applicant used money from a part-time job to help pay his tuition, and some of that income was devoted to the drug purchases.

Applicant quit his drug-related abuse and ventures nearly two and a half years ago, when he completed his college academic program.⁴ (Tr. 21-22, 42, 63-64) Applicant quit using the drug because he "was entering the real world, and things like that are not accepted," and to show his older sister that he had equal and solid aspirations and goals. (Tr. 21, 43) In facing the working world, he accepted that it was time to face adult experience and start a profession. (Tr. 43-44)

In addition, from May 2009 to August 2009, while Applicant was a full-time freshman working his way through college, Applicant briefly used cocaine. During that period, he first tried, then used a small amount of cocaine that he had bought from a peer who has since quit using drugs. Using the drug only by himself, Applicant "nursed" the "very tiny," marble-sized amount of cocaine over a three-month period. (Tr. 25-26)

² In his 2014 security clearance application, Applicant repeatedly wrote 2014 with regard to the year he completed his collegiate studies and stopped using drugs, when he meant 2013. (See, e.g., Tr. 45) Applicant corrected similar mistakes during a June 2014 investigative interview process.

³ Four friends would usually contribute about \$75 each toward the drug purchase. Any profit made by the buyer would only amount to \$5-\$10. (Tr. 23-24, 58)

⁴ Contrary to SOR allegations 1.a and 1.c, Applicant credibly denied that he ceased his association with marijuana in 2013, not 2014.

When the cocaine was exhausted, he quit using the drug. He did not really enjoy or know how to use the drug. (Tr. 38) He classifies the purchase as an “experiment.”

Today, Applicant is drug-free. He still maintains contact with some of the people he knew in school who used drugs at the time, but they have since matured and ceased using them. He no longer has “any association with drugs or drug-related individuals. I’m very, very conscientious about who [sic] I allow in my circle.” (Tr. 27) His former academic peers who once used drugs have successfully moved on to professional careers. This includes at least two of his references, who quit drugs and work in a legal field or are graduate students. (See Ex. A) Applicant is committed to avoiding contact with anyone he believes uses or has returned to using illegal drugs.

Since quitting drugs before college graduation, Applicant has matured and concentrated on both building a professional career and being active in his community. At the request of his former secondary school’s principal, he is now an enthusiastic volunteer sports coach. He enjoys mentoring the school’s students, warning them of the dangers and implications of using illegal drugs, and advising them against using electronic cigarettes, liquid tobacco, and other questionable substances. (Tr. 29) With that regard, he initiates discussions with parents whose children he believes are at risk.

Moreover, Applicant is now also active with church food drives in his community, volunteering with meal and clothing programs for the homeless, and regularly donates blood. He is highly regarded by the school’s full-time coaching staff, including an assistant coach who once coached Applicant and the school’s president. (Tr. 34-35; Ex. A) Friends, associates, and his work supervisor also speak highly of Applicant. (Tr. 36-37; Exs. B-C) He is well-regarded at work. None of his references use drugs. Applicant lives responsibly and currently rents a house. His family knows of his past drug use. He has never had problems with law enforcement concerning his past drug use. He regrets his past dealings regarding, and abuse of, both marijuana and cocaine. He submitted a statement of intent not to use illegal drugs in the future or risk automatic revocation of any security clearance granted. (Tr. 13-14; Ex. E)

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. 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 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. Likewise, I have not drawn 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, 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 and 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. The Government reposes a high degree of trust and confidence in those granted access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard such information. Decisions shall be in terms of the national interest and do not question the loyalty of an applicant.

Analysis

Guideline H, Drug Involvement

The security concern for this guideline is set forth 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.

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.

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

The guideline notes several disqualifying conditions that could raise security concerns. I find that AG ¶ 25(a) (*any drug abuse*) and AG ¶ 25(c) (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia*) potentially apply. Applicant recreationally used marijuana with varying frequency from 2006 through 2013, and used cocaine in 2009. As well, he occasionally possessed, bought, and sold marijuana, and also purchased and possessed cocaine. Therefore, AG ¶ 25(a) and AG ¶ 25(c) apply.

The Government's substantial evidence and Applicant's own admissions have thus raised security concerns under Guideline H. Under Directive ¶ E3.1.15, the burden shifts to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. An applicant has the burden of proving a mitigating condition.⁵

Guideline H also includes examples of conditions that could mitigate security concerns arising from drug involvement. The following mitigating conditions potentially apply to Applicant's case: AG ¶ 26(a) (*the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*) and AG ¶ 26(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*).

AG ¶ 26(a) applies because Applicant's drug use was limited to his student years. Well over two years have passed since his last collegiate use of marijuana and nearly seven years have passed since he experimented with cocaine. He credibly testified that his high school and college drug use was limited, irregular, and something he has put behind himself since finishing his university academic program. Since that time, he has become focused on his future and his career. He has moved on with his life, as a young working professional, enthusiastic community volunteer, and youth mentor. He was forthcoming with investigators and credible at the hearing regarding mistakes in the record, thus lending a certain degree of credence to his corrections on other SCA entries and attributed comments. Applicant appears to understand the security concern involving illegal drug use. Now more mature and concentrating on work, he will not risk jeopardizing his budding career by returning to illegal drug use.

In addition, AG ¶ 26(b) applies because Applicant has credibly expressed his commitment to staying drug-free and focusing on a responsible future. He has not used illegal drugs for nearly three years. While that may not be a tremendous amount of time, it is a lengthy period for one his age. His illegal drug use was limited to school. He has matured considerably. He no longer associates with friends who use drugs. He provided a signed statement of intent to refrain from illegal marijuana use with the understanding that his security clearance will be automatically revoked for any violation. He will not demonstrate such poor judgment regarding illegal drugs again.

⁵ See ISCR Case No. 02- 31154 at 5 (App. Bd. September 22, 2005).

Whole-Person Concept

Under the whole-person concept, one must evaluate security clearance eligibility by considering the totality of the applicant's conduct and all relevant circumstances. Consideration shall be given to the nine adjudicative process factors listed at AG ¶ 2(a). The final determination must be an overall commonsense judgment based on 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, and conducted a whole-person analysis based on the record. In addition to Applicant's past illegal drug involvement, I considered his present life, candor at the hearing, and credible explanations.

Applicant is a mature and highly credible young man. He is single and has no children. He worked his way through college, earned a degree, and has become both an active community volunteer and youth mentor. Against his own background of drug abuse, which ended nearly three years ago as he finished his collegiate academic program, he now urges students to eschew drugs. He will not associate with those who abuse drugs. He is committed to remaining drug-free and will not jeopardize his career. Applicant fully understands the consequences that additional illegal drug use may have on his future. He has met his burden and mitigated drug involvement 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.d:	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. Eligibility for access to classified information is granted.

Arthur E. Marshall, Jr.
Administrative Judge