



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



In the matter of:)
)
) ISCR Case No. 15-00234
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

12/04/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline H, drug involvement. Applicant's eligibility for a security clearance is granted.

Statement of the Case

On July 20, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) 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 effective within the DOD for SORs issued after September 1, 2006.

On August 10, 2015, Applicant answered the SOR, and he elected to have his case decided on the written record in lieu of a hearing. On August 28, 2015, Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant, and it was received on September 14, 2015. Applicant was afforded

an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government documents offered as evidence. Items 2 and 3 were admitted into evidence. Applicant did not submit additional material. The case was assigned to me on November 9, 2015.

Findings of Fact

Applicant admitted both SOR allegations. I have incorporated his comments into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 23 years old. He graduated from college in June 2014 earning a bachelor's degree. He is not married and has no children.

Applicant admitted he used marijuana six times between 2010 and 2011. He used it with high school friends. He purchased one eighth of an ounce of marijuana one time in 2011, from a former high school classmate.

In January and February 2014, Applicant used marijuana three times with members of a band he plays with. He has not used marijuana since then and does not intend to use marijuana or any other illegal drug in the future because he understands its use could jeopardize his employment and because of the potential criminal consequences.¹ Applicant disclosed his past drug use and purchase of marijuana on his security clearance application.²

In Applicant's answer to the SOR, he stated he has completely disassociated himself from the high school friends he used marijuana with in 2010 and 2011. He no longer has contact with them. He no longer associates with the person from whom he made a one-time purchase of marijuana in 2011.

Applicant further stated in his answer that he has "intentionally and strictly abstained from marijuana use since February 2014." He stated that the four people he plays with in a band will agree and attest that he has intentionally removed himself from any usage or exposure to any drugs since February 2014.

Applicant provided the following signed statement dated August 10, 2015:

I will not use any illegal drugs or misuse a prescription drug, understanding that upon potential grant of a security clearance, any violation will result in the automatic revocation of the clearance.³

¹ Item 3.

² Item 2.

³ Item 2.

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 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 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 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, 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 as to 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 that an applicant may deliberately or inadvertently fail to 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

The security concern relating to the guideline for drug involvement is set out 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.

The guideline notes several conditions that could raise security concerns. I have considered the following under AG ¶ 25:

(a) any drug abuse; and

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

Applicant used marijuana six times in 2010 and 2011. He purchased marijuana one time in 2011. He used marijuana three times in between January and February 2014. I find the above disqualifying conditions have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from drug involvement. I have considered the following mitigating conditions under AG ¶ 26:

(a) the behavior happened so long ago, was so infrequent, or happened 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

(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.

Applicant used marijuana six times when he was 18 and 19 years old. He purchased it once when he was approximately 19 years old. He used it again when he 21 years old and in college. After his last use in February 2014, he made a conscious commitment to not use illegal drugs in the future. He realized its impact on his career and the potential criminal problems that could result. It has been 21 months since his last use. I find considering Applicant's age at the time of his use, he has demonstrated an appropriate period of abstinence. Applicant no longer associates with the people he

used marijuana with in 2010 and 2011. However, he continues to associate with his band members with whom he used marijuana with in 2014. This is a potential concern. I considered Applicant's statement that his band members are aware of his intention to not use marijuana or be exposed to any illegal drugs. He provided a signed statement of intent with automatic revocation of clearance for any violation of drug use. I conclude his actions during his college years were the result of youthful indiscretion. I believe Applicant understands the egregious impact it would have on his career and future were he to use illegal drugs. There is sufficient evidence to conclude future drug use is unlikely to recur. AG ¶¶ 26(a) and 26(b) 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 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline H in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 23 years old. His infrequent drug use occurred while he was in college or before then. It appears he now understands the ramification of his past conduct and the potential problems he could have in the future if he were to use drugs again. I believe Applicant's conduct can be attributed to his immaturity at the time. He appears to be committed to avoiding all contact with illegal drugs as he pursues his professional career. The record evidence does not leave me with 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 under Guideline H, drug involvement.

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's eligibility for a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge