



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



In the matter of:)
)
) ISCR Case No. 15-03347
)
Applicant for Security Clearance)

Appearances

For Government: Braden Murphy, Esq., Department Counsel
For Applicant: *Pro se*

05/12/2016

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guidelines E, personal conduct, H, drug involvement, and J, criminal conduct. Applicant's eligibility for a security clearance is granted.

Statement of the Case

On October 22, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines E, personal conduct, H, drug involvement, and J, criminal conduct. 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 (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on November 4, 2015, and requested a hearing before an administrative judge. The case was assigned to me on February 5, 2016. The

Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 22, 2016. I convened the hearing as scheduled on March 16, 2016. The Government offered exhibits (GE) 1 through 8, which were admitted into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A through C, which were admitted into evidence without objection. The record was held open until March 23, 2016, to allow Applicant to submit additional documents. He submitted exhibits that were marked AE D through G, and they were admitted into evidence without objection. The record then closed.¹ DOHA received the hearing transcript (Tr.) on March 28, 2016.

Procedural Matters

Department Counsel moved to amend the SOR to accurately reflect the evidence. SOR ¶ 3.a is amended, deleting the words “not guilty” and substituting the words “no contest.” The motion was granted.

Findings of Fact

Applicant admitted all of the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 26 years old. He married in 2013. He has no children. He earned a bachelor's degree in 2014. He has worked for his present employer, a federal contractor, since July 2012.²

Applicant started college in 2008 at the age of 18 and was awarded a Reserve Officers' Training Corps (ROTC) scholarship. As part of the required paperwork to be completed to participate in the program he completed a security clearance application (SCA). He started the SCA process while in high school and signed the document in October 2008.³ Applicant failed to disclose his prior drug use on the SCA because he was worried his parents would find out; he would lose his scholarship; and he would be unable to attend college. He was granted a security clearance in May 2009.⁴

Applicant illegally used marijuana with varying frequency from April 2007 to September 2011. He experimented with cocaine on two occasions between June 2008 and October 2010. In 2009, he experimented one time with hallucinogenic mushrooms. In March 2010, he experimented one time with ecstasy. He purchased and sold

¹ HE II is Department Counsel's email memorandum.

² Tr. 23-26.

³ Tr. 50-51; GE 6.

⁴ Tr. 28-30, 51, 55.

marijuana in small amounts to his friends with varying frequency while in college until September 2011.⁵

In September 2011, Applicant was arrested at his dorm room at college. He admitted he had marijuana in his dorm room. He estimated he had about a quarter of a pound of marijuana. He credibly testified that he and his roommate had purchased a large amount for their own use throughout the school year. They were not intending to sell it. Applicant's roommate was not arrested because the marijuana was found in Applicant's room in the suite he shared with his roommate. Applicant was starting his senior year of college at the time.⁶

Applicant was aware that he was not to use illegal drugs as part of his ROTC commitment. He explained he was in a college environment, was hanging around the wrong people, and made poor decisions. In July 2011, while participating in a ROTC summer program, he was given a drug test that he passed. He was not subjected to regular random drug tests. Applicant explained that his illegal behavior continued until he was caught in September 2011.⁷

Applicant was charged with felony possession of cannabis; misdemeanor possession of drug paraphernalia; felony possession of cannabis with the intent to sell, manufacture; and felony possession of cannabis with intent to sell.⁸ In February 2012, the state did not go forward on the intent to sell charges and Applicant pled no contest to the possession of drug paraphernalia and possession of cannabis charge. As part of a pretrial agreement, he participated in a pretrial diversion program.⁹

In June 2012, the Army notified Applicant of its intent to revoke his security clearance. Applicant credibly testified that after he completed the SCA in 2008 as part of the ROTC requirements, he was never told that he was granted a security clearance. He stated that he knew the use of illegal drugs was a concern of the government, and it was wrong. At the time, he did not know what the potential ramifications were for his failure to disclose his drug use on his SCA or of its importance to his future. After his arrest, he changed his behavior and rearranged his priorities.¹⁰

The pretrial diversion program required Applicant to attend a county drug program. Applicant was required to submit to weekly drug testing; attend weekly group meetings; participate twice a week in Narcotics Anonymous; abstain from illegal drug

⁵ Tr. 52-54.

⁶ Tr. 30-35.

⁷ Tr. 27, 36, 50-52, 54.

⁸ GE 2, 3.

⁹ Tr. 37-39.

¹⁰ GE 4, 7.

use for one year; report monthly in person to his probation officer; and pay \$100 a month to participate in the program. Applicant credibly testified that he complied with all of the requirements and never missed a meeting. He was also working during this time. He completed the program in December 2012. The correctional probation senior supervisor provided a letter to Applicant upon completion of the program. It noted he had fully complied with the pretrial agreement and the charges against Applicant were dismissed in December 2012.¹¹

After Applicant's arrest, he was suspended from college for two years, resigned from ROTC and lost his scholarship, which he is required to repay. His actions put immense stress on his family and his girlfriend. He subsequently decided to visit his high school and tell students his experience with illegal substances. Applicant told his story in front of 200 students. He told them about the bad decisions he made and gave advice on what to look out for when the students go to college. Applicant's lecture was not a requirement of the pretrial diversion program. Applicant stated that he is not making excuses for his conduct and takes responsibility for the poor decisions he made, but it was important to him to share his experience in order for others to not make the same mistakes.¹²

After Applicant completed the pretrial diversion program, he realized he needed to get his life back on track. Before he was hired in July 2012, he told his employer about his criminal conduct. In 2013, he married his girlfriend, who had been with him since his arrest. In January 2014, he resumed attending college and graduated in December 2014. He worked while attending college. He was promoted by his employer and was awarded a certificate of achievement from a command that is a client of his employer. In 2015, he was certified as a program management professional. Applicant completed the certification requirements in two years, a course that normally takes three to five years. He received an "exceptional" rating from his employer on his performance assessment report.¹³ He and his wife purchased their first house in 2016. He has gone back to attending church with his wife and is now focused on a "moral compass" that helps define his life.¹⁴

Applicant has been repaying his scholarship since 2012. He has an automatic payment of \$274 deducted from his account each month. The total balance owed as of March 2016 is \$20,486.¹⁵

Applicant completed an SCA in April 2014. In it he disclosed his arrest and drug involvement as described above. During his July 2014 background interview with a

¹¹ Tr. 40-46 62-65; AE E.

¹² Tr. 67-68; Answer to SOR.

¹³ AE A.

¹⁴ Tr. 27, 36, 46-49; AE C, D.

¹⁵ Tr. 26, 56-57; AE D.

government investigator, Applicant disclosed his arrest and drug involvement as described above.

Applicant no longer associates with anyone who uses illegal drugs. His last use of an illegal drug was before his 2011 arrest. His employer has a zero drug tolerance policy and random drug testing. To date he has not been required to participate in the testing. Applicant provided a written statement acknowledging any future use, possession, distribution or drug involvement will result in termination of a security clearance if one is granted. He indicated his intention to abstain from future use of any illegal drug use. He described himself during his college years as an immature young man who made poor decisions, and he is not that man anymore. He has taken responsibility for his actions and diligently worked hard to improve his life. He admitted he did not understand the seriousness or ramifications his drug use would have on his future. He is committed to his job and loves his country.¹⁶

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 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."

¹⁶ Tr. 58-62, 70; AE F.

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 the applicant may deliberately or inadvertently fail to safeguard 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline J, Criminal Conduct

AG ¶ 30 sets out the security concern relating to criminal conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

I have considered the disqualifying conditions under criminal conduct AG ¶ 31 and the following two are potentially applicable:

- (a) a single serious crime or multiple lesser offenses; and
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

In 2011, Applicant was arrested and charged with felony possession of cannabis, misdemeanor possession of drug paraphernalia, and felony possession of cannabis with the intent to sell, manufacture. I find the above disqualifying conditions apply.

I have also considered all of the mitigating conditions for criminal conduct under AG ¶ 32 and the following two are potentially applicable:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Applicant entered a plea of no contest to the possession of drug paraphernalia and felony possession of cannabis charges. As part of a pretrial agreement he completed a pretrial diversion program. In December 2012 the charges against Applicant were dismissed. He does not have any further legal requirements concerning these charges.

Applicant provided substantial evidence of successful rehabilitation. He has not used any illegal drug since his arrest in September 2011. He has been employed since July 2012 and has been promoted. He received an exceptional evaluation. He completed a program manager certification program and has graduated from college. He is repaying his scholarship debt. He received a certificate of appreciation from a client for whom he provided work. He is married, and he and his wife recently purchased a home. He shared his story with high school students about associating with the wrong crowd and making poor decisions. I find a sufficient amount of time has passed since Applicant's criminal conduct. Although, going to college is not a unique circumstance, I considered Applicant's age, immaturity, and peer pressure influences that were present during this time and find they are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. Both mitigating conditions apply.

Guideline H, Drug Involvement

AG ¶ 24 expresses the security concern for 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 the disqualifying conditions for drug involvement under AG ¶ 25 and the following are potentially applicable:

- (a) Any drug abuse;
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (g) any illegal drug use after being granted a security clearance.

Applicant used various illegal drugs from approximately 2007 to September 2011. During the same time period, he sold marijuana to his friends and possessed

drug paraphernalia. He was granted a security clearance in approximately May 2009. The above disqualifying conditions apply.

I have considered the mitigating conditions under AG ¶ 26. 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; 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.

The same analysis under the criminal conduct guideline applies to the drug involvement guideline. In addition, Applicant completed a pretrial diversion program, which included total abstinence of illegal drug use, participation in Narcotics Anonymous, and weekly group meetings. He credibly testified that he has changed his life as discussed above. He has not used any illegal drugs since September 2011. He no longer associates with drug-using associates. He submitted a signed statement of intent not to use drugs in the future with automatic revocation of clearance for any violation. Based on the successful rehabilitation evidence, I believe Applicant has moved past his youthful indiscretions and is committed to making good decisions, excelling at work, and being a devout husband. I find future involvement with illegal drugs is unlikely to recur. I have considered that Applicant was using illegal drugs while holding a security clearance, a serious violation; however, I am convinced that while he was in college he did not appreciate the gravity of his conduct and its implication regarding a security clearance. I believe he understands the seriousness of his conduct, and has a mature appreciation for the trust one is given when holding a security clearance. AG ¶¶ 26(a) and 26(b) apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct;

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. I find the following one potentially applicable:

(a) deliberate omission, concealment, or falsifications of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant intentionally failed to disclose his illegal drug use and possession of an illegal substance on his 2008 SCA. The above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following three mitigating conditions under AG ¶ 17:

(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;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken positive steps to alleviate the stressors, circumstances, or factors that caused the untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

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

In 2008, as a college freshman, Applicant completed an SCA as part of his ROTC paperwork. He was unaware that he was granted a security clearance at a later date, but took full responsibility for his conduct in failing to disclose his drug involvement on his SCA while participating in ROTC. He was afraid he would lose his scholarship and his parents would learn of his drug use. Applicant's conduct was not minor. However, I have considered he was 18 years old at the time and did not have an appreciation for the seriousness or ramifications of his conduct. It does not excuse his conduct, but he has matured considerably. He did not make excuses for his actions, but acknowledged he was making poor decisions and took full responsibility for his conduct. The analysis above of Applicant's rehabilitation is also applicable under this guideline. I believe the behavior he exhibited in the past is unlikely to recur. Applicant understands the importance of disclosure and did so on his 2014 SCA and during his background interview. He has taken positive steps to reduce or eliminate exploitation and manipulation by addressing students at his former high school about his mistakes. He disclosed his criminal past to his employer when he was hired. He is also repaying his scholarship. I believe Applicant has matured from an irresponsible college student to a mature man, who is married, has a good job, and understands his responsibilities.

Although being dishonest on a SCA is a serious issue, I believe in this case he is deserving of a second chance. The above mitigating conditions 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines E, H, and J in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is 26 years old. While in college he used and possessed numerous illegal drugs over several years. He had a ROTC scholarship at the time and was required to apply for a security clearance. The evidence supports a finding that Applicant's criminal conduct and drug involvement is in his past. The more serious concern was his failure to disclose this conduct on a 2008 SCA. I am convinced that this failure was an aberration by an immature college student. Applicant has changed the course of his life and is obviously on the right path. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigate the security concerns arising under the personal conduct, drug involvement and criminal conduct guidelines.

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 E:

FOR APPLICANT

Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraphs 1.a-1.f:	For Applicant
Paragraph 3, Guideline J:	FOR APPLICANT
Subparagraph 1.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 a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge