



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



In the matter of:)
)
) ISCR Case No. 14-05466
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esquire, Department Counsel
For Applicant: Eric A. Eisen, Esquire

09/25/2015

Decision

RIVERA, Juan J., Administrative Judge:

Applicant has a history of poly-drug abuse that ended in 2013. He sought professional counseling and has made positive lifestyle changes to avoid any future drug involvement. He is now a dedicated, mature, and responsible professional. He mitigated the drug involvement security concerns. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on July 21, 2013. The Department of Defense (DOD) issued him a Statement of Reasons (SOR) alleging security concerns under Guideline H (drug involvement) on November 15, 2014.¹ Applicant answered the SOR on December 31, 2014, and requested a hearing before

¹ The DOD acted 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* (Directive) (January 2, 1992), as amended; and the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.

an administrative judge. The case was assigned to me on March 27, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 8, 2015, scheduling a hearing for June 1, 2015.

Department Counsel offered one exhibit into evidence (Government Exhibit (GE) 1), and Applicant offered eight exhibits into evidence (AE A through H). There were no objections, and I admitted all exhibits. DOHA received the hearing transcript (Tr.) on June 8, 2015.

Findings of Fact

In his answer, Applicant admitted the factual allegations in SOR ¶¶ 1.a, 1.c, 1.e and 1.f. He denied SOR ¶¶ 1.b and 1.d, with explanations. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact:

Applicant is a 33-year-old employee of a federal contractor. He completed bachelor's degrees in electrical engineering in 2004, and in computer engineering in 2006. He received his master's degree in electrical engineering in 2007, and his doctorate's degree in December 2012. Applicant has never been married, and has no children. He has been working for his current employer, a prestigious physics laboratory, since August 2013. He requires a security clearance to continue his employment.

Applicant disclosed in his 2013 SCA (his first SCA) a history of illegal poly-drug use. Between February 2003 and May 2013, Applicant used marijuana with varying frequency; between 2008 and 2009, he used LSD (Lysergic acid diethylamide) about 19 times; between 2009 and 2011, he used psilocybin mushrooms about 5 times; in 2010, he used 2CE (psychedelic phenethylamine) about 4 times; in 2009, he used cocaine once; in 2010, he used MDMA (Ecstasy) about 4 times; and in 2011, he used Ketamine about 3 times.

Applicant's illegal drug of choice was marijuana. He only used the other illegal substances when they were provided to him by friends at concerts or other social activities. On various occasions, Applicant purchased and sold marijuana. He sold small amounts of his personal marijuana smoking supply at or below cost to his close friends. He estimated that he sold marijuana about seven times over a period of five years. He denied ever selling illegal drugs for profit. He also contributed money to marijuana-buying funds for his and his friends' personal use.

Applicant explained that he grew up with a strong religious upbringing in a conservative, small town. He did not use any illegal drugs while in high school. He started to experiment with illegal drugs during college (2003), at age 21-22. Because of his sexual orientation, he experienced discrimination and had difficulty adjusting to the rejections from college friends and the church. He made new friends in the gay community that used illegal drugs on a frequent and social basis, and he saw his use of

illegal drugs as part of the socializing process. Applicant used marijuana to relax, and to cope with his depression and fears. He did not use alcohol because it exacerbated his depression.

In 2007, Applicant became depressed and sought out psychological counseling in 2008, and then again in 2011-2012. He sought counseling because he believed he was using marijuana on a regular basis as a coping mechanism for his depression, and he did not want to live the rest of his life using illegal drugs to deal with his depression. He also was treated by a psychiatrist, and was prescribed anti-depressants, which he used until late 2012. He was diagnosed with depression, but did not receive a substance abuse diagnosis. He is not currently taking any medications. Applicant testified that his treatment worked well, and he was able to stop using marijuana by the end of his doctorate program. His most recent use of marijuana was during a reunion with college friends in May 2013. Applicant denied any association with his college drug-using friends and associates since May 2013.

Applicant started working for his employer in August 2013. He loves his job, and has a good relationship with his coworkers and supervisors. He no longer feels rejected or discriminated because of his sexual orientation. On the contrary, he feels like he is part of a large family where he receives positive reinforcement for his good performance. He denied any association with any illegal drug users since he started working for his employer.

Applicant expressed remorse and shame for his use of illegal drugs. He believes he is now a much happier person without the use of drugs. Applicant has no intention to ever use illegal drugs again. Through his counseling, he has addressed the underlying psychological stresses that led to his illegal drug use. He now knows that there are legal treatments available that he can seek if he should have a need for them again. Applicant signed a statement of intent to not use illegal drugs in the future, and agreed to the automatic revocation of his security clearance for any violation. (AE G)

Applicant submitted favorable reference letters provided by a friend, a teacher, a college professor, and his two current supervisors. The references corroborate Applicant's explanations concerning his upbringing and past personal problems. The two supervisors lauded Applicant's performance. He is considered to be an impeccable professional, extremely reliable, and technically knowledgeable. He has earned the trust of his supervisors and was given a position in technical leadership for a program. Both supervisors endorsed Applicant's eligibility for a security clearance.

Policies

Eligibility for access to classified information may be granted "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing

that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Drug Involvement

AG ¶ 24 articulates the security concern concerning 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.

AG ¶ 25 describes two drug-involvement disqualifying conditions that could raise a security concern and may be disqualifying in this particular case: “(a) any drug abuse;”² and “(c) illegal drug possession.”

Applicant has a history of illegal drug involvement. Between February 2003 and May 2013, he used marijuana with varying frequency, and experimented with LSD, psilocybin mushrooms, 2CE, cocaine, Ecstasy, and Ketamine. He purchased and sometimes sold marijuana (not for profit) on diverse occasions. Applicant disclosed his drug involvement on his 2013 SCA, his SOR response, and at his hearing. AG ¶¶ 25(a) and 25(c) apply.

AG ¶ 26 provides potentially applicable drug involvement mitigating conditions:

(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;

(4) a signed statement of intent with automatic revocation of clearance for any violation.

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and

(d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Applicant recognized the adverse impact his drug abuse had on his life and sought out psychological and psychiatric counseling in 2008, and 2011-2012. He has not used any illegal drugs after May 2013. He has disassociated from his drug-using associates, friends, and contacts. He has broken his pattern of drug abuse, and he has changed his lifestyle with respect to illegal drug use. He moved to another state and his

²AG ¶ 24(b) defines “drug abuse” as “the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.”

job performance shows that he is now a mature professional, reliable, dependable, and trustworthy.

Through his counseling, Applicant addressed the underlying psychological stresses that led to his illegal drug use. (He received counseling for depression, and not for substance abuse problems.) He now knows that there are legal treatments he can seek if he should have a need for them again. Additionally, he signed a statement of intent with automatic revocation of clearance for any violation. His current behavior is encouraging and creates some certitude that he will continue to abstain from drug use. Applicant's past illegal drug use does not cast doubt on his current reliability, trustworthiness, and judgment. AG ¶¶ 26(a), (b), and (d) apply and mitigate the drug involvement security concerns. AG ¶ 26(c) is not applicable because Applicant did not abuse prescription drugs.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c). 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 was young and immature when he began using illegal drugs. His drug abuse may have been caused, in part, by his mental and emotional problems. Applicant is now a 33-year-old employee of a federal contractor and makes significant contributions to his employer. He sought professional counseling and has made positive lifestyle changes. He is now a dedicated professional.

Applicant was truthful and forthcoming during the security clearance process. His admissions of illegal drug-related behavior on his SCA are a positive sign that Applicant has matured and is taking responsibility for past misconduct. He stopped using illegal drugs in May 2013. He has demonstrated that he knows the possible adverse consequences he will face if he engages in any additional illegal drug abuse. I am impressed with Applicant's sincerity and commitment to change, his promise to continue to refrain from using illegal drugs, and his decision to be honest in security matters.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude Applicant has mitigated the security concerns pertaining to 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 through 1.f: 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.

JUAN J. RIVERA
Administrative Judge