



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



In the matter of:)
)
) ISCR Case No. 14-02864
)
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: Ryan Nerney, Esq.

May 23, 2017

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant mitigated the Drug Involvement security concerns that arose out of his infrequent marijuana use from September 1982 through January 2013. Applicant has been candid with the Department of Defense about his illegal drug involvement, 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 June 6, 2013, Applicant submitted an Electronic Questionnaires for Investigative Processing (e-QIP). On October 24, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H, Drug Involvement. 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 December 19, 2014, and requested a hearing before an administrative judge. The case was assigned to me on December 5, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 14, 2016, and the hearing was convened as scheduled on February 8, 2017. The Government offered Exhibits (GE) 1 and 2, which were admitted without objection. The Applicant offered Exhibits (AE) A through I, which were admitted without objection. Applicant testified on his own behalf and called one witness. The record then closed. DOHA received the hearing transcript (Tr.) on February 16, 2017.

Findings of Fact

Applicant is a 50-year-old employee of a government contractor, where he has worked for three years. He is married and has one minor son. He seeks his first DoD security clearance in connection with his work assignment. (GE 1; AE H; Tr. 18-19.)

The SOR alleged that between September 1982 and January 2013, Applicant used marijuana. In his Answer to the SOR, Applicant admitted this allegation, with clarifications.

Applicant's used marijuana 15 to 20 times between September 1982 and January 2013. He estimated he used it twice, at the age of 16, in 1982. He also used it a few times in college. In 2008 or 2009, he used it five or six times as a self-prescribed remedy to treat insomnia. At that time, he found another remedy for insomnia and ceased marijuana use because, "it was illegal and I was dumb for using it." However, in 2013 he unintentionally used marijuana again when he smoked a clove cigarette that unknowingly had been laced with marijuana. On this occasion, he took a puff off of someone else's clove cigarette at a social gathering and discovered it did not taste like a regular clove cigarette. He learned afterward that the person hollowed out a regular clove cigarette and put marijuana in it. He no longer associates with the friend that provided the cigarette laced with marijuana. None of his current friends or associates use marijuana. He has never purchased any marijuana. Applicant honestly reported all uses of marijuana. (Tr. 20-35.)

Applicant recognized the poor judgment of his past illegal drug use. He signed a statement of intent demonstrating he would not abuse any drugs in the future. All drug tests in evidence were negative. A letter from Applicant's physician indicated no evidence of drug use has been observed. (AE A; AE B; AE C; Tr. 25-26.)

Applicant is well respected by those who know him, as verified by his witness that testified on his behalf and several character reference letters introduced into evidence. He is considered honest and trustworthy. (AE G.)

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 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, administrative judges apply the guidelines 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(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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the 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." The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 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.

Section 7 of EO 10865 provides that adverse 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

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 are potentially applicable:

(a) any drug abuse; and

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

The Government presented sufficient information to support all of the factual allegations under Guideline H. Applicant used marijuana, infrequently from September 1982 until approximately 2009. He also unintentionally ingested marijuana once in 2013. The facts established through the Government's evidence and through Applicant's admissions raise security concerns under both of the above disqualifying conditions.

I have considered the mitigating conditions under Drug Involvement AG ¶ 26, and the following are 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 intentional sporadic illegal drug use spanned over a 27-year period, Applicant has made a number of significant changes in his life during the past eight years that demonstrate his serious commitment to abstinence from illegal substances. He recognized that he was wrong to use marijuana. He ceased using all drugs prior to applying for a security clearance. He disassociated himself from drug-using friends and associates. He focuses on being a role model for his ten-year old son. Thus, he has changed his environment and no longer frequents places where drugs might be used. While the Directive does not define what constitutes "an appropriate period of abstinence" under AG ¶ 26(b)(3), his candor about his illegal drug abuse leads me to accept as credible his assertions of no future intent to use marijuana, under any circumstances. Applicant has demonstrated sufficient intent not to use any illegal drugs in the future. He signed a statement of intent with automatic revocation of clearance for any violation. 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).

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 over a long span. He was irresponsible at the time and did not recognize the seriousness of his actions. He has now matured. He has not used illegal substances intentionally for eight years after coming to the revelation that there was no room for illegal substances in his professional life. While he unintentionally used marijuana in 2013 after taking a puff from a marijuana-laced cigarette, he now is aware of the hazards of intentional ingestion and will avoid placing himself in such positions in the future. His changes are permanent and the likelihood of recurrence is extremely low. Applicant is respected by those who know him. He has a reputation for honesty and trustworthiness. Applicant's current reputation for honesty, coupled with his candor concerning his past drug use, adds weight to his commitment to abstain from illegal drug use. 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 should 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

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