



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



In the matter of:

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) ISCR Case No. 14-03195
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Applicant for Security Clearance

Appearances

For Government: Stephanie C. Hess, Esq., Department Counsel

For Applicant: *Pro se*

05/04/2016

Decision

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the drug involvement security concerns related to his lengthy history of marijuana use. Clearance is denied.

Statement of the Case

On March 12, 2015, 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 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 as of December 1, 2006.

Applicant answered the SOR on April 2, 2015, denying subparagraphs 1.a and 1.c, and admitting subparagraph 1.b. He requested a decision on the record instead of a hearing. On September 8, 2015, Department Counsel prepared a File of Relevant

Materials (FORM) setting forth the Government's case. Applicant received the FORM on September 17, 2015, and was instructed that he had 30 days to file a reply. Applicant did not reply within the time allotted, and the case was assigned to me on December 31, 2015.

Findings of Fact

Applicant is a 74-year-old married man. He graduated from college in 1964. Since 1969, he has served as the chairman and chief executive officer of a medical information technology company. (Item 4 at 11 - 12) Since 1996, his work has included federal contracts. He has possessed a security clearance since 1997. (Item 5 at 27)

Applicant smoked marijuana intermittently from 1969 to 2012. (Item 4 at 34-35; Item 6 at 8) Since the late 1990s, his use has been less frequent. (Item 3 at 1) Although he has not smoked marijuana since 2012, he may use it in the future "if the situation arises." (Item 4 at 35)

Policies

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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."

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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a security clearance.

Analysis

Guideline H, Drug Involvement

Under this guideline, "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 ¶ 24) Applicant has a history of marijuana use, beginning in 1969. His marijuana use overlapped with the period when he held a security clearance. Although he has not used marijuana in five years, he has

failed to commit to discontinue use. AG ¶¶ 25(a), “any drug abuse,” 25(g), “any illegal drug use after being granted a security clearance,” and 25(h), “expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use,” apply. Given his equivocal statement about future marijuana drug use, none of the mitigating conditions applies.

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.

Applicant has not smoked marijuana in four years. However, in light of the length of time that he smoked it, his age when he stopped, and his failure to convincingly commit to continued abstinence, it is not clearly consistent with the national interest to grant him continued access to classified information.

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:	AGAINST APPLICANT
Subparagraphs 1.a - 1.c:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MARC E. CURRY
Administrative Judge

