



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-04101

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel

For Applicant: *Pro se*

April 24, 2015

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his most recent Electronic Questionnaire for Investigations Processing (e-QIP), on February 12, 2014. (Government Exhibit 1.) On September 29, 2014, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guideline H (Drug Involvement) concerning Applicant. 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 within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on October 28, 2014 (Answer), and requested a decision without a hearing. He subsequently requested a hearing before an administrative judge. Department Counsel was prepared to proceed on January 12, 2015. This case was assigned to me on January 21, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 22, 2015. I convened the hearing as scheduled on February 26, 2015. The Government offered Government Exhibits 1, and 2, which were admitted without objection. Applicant testified on his own behalf, called one additional witness, and submitted Applicant Exhibits A

through D, also without objection. Applicant requested that the record remain open for receipt of additional documentation. Applicant submitted Applicant Exhibit E on March 10, 2015, and it was admitted without objection. DOHA received the transcript of the hearing (Tr.) on March 3, 2015. The record closed on March 10, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 29 and single. He has a bachelor of arts degree. He is employed by a defense contractor, and seeks to retain a security clearance in connection with his employment.

Paragraph 1 (Guideline H, Drug Involvement)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has used marijuana, and that he used it while holding a security clearance. Applicant admitted both allegations in the SOR, and submitted additional information supporting his request for a security clearance.

Applicant attended college from 2003 through 2007. Applicant admits using marijuana about three or four times during his college years. He admitted that use on his first e-QIP, which he filled out on October 10, 2008. He received a security clearance about that time. (Government Exhibit 2; Tr. 33-35.)

In about 2012 Applicant was at a party with some friends from college. A marijuana cigarette was passed around and Applicant had some. He regretted using it the next day, admitting, "it didn't necessarily cross my mind that I was violating my employment or my agreement with the Department of Defense. It should have." Applicant no longer associates with those people. He admitted this one additional use on his second e-QIP, which he completed in February 2014. (Government Exhibit 1; Tr. 35-37, 40-41.)

Applicant has not used marijuana since about 2012 and has repeatedly stated that he will not use marijuana again. In addition, he submitted a signed statement of intent not to use illegal drugs in the future, with his understanding that a violation shall result in automatic revocation of his security clearance. (Answer; Applicant Exhibit D; Tr. 38, 41, 47-48.)

Mitigation

Applicant submitted documentation showing that he is a highly respected employee. Applicant Exhibits A through C are his Performance Reviews for the 2011, 2012, and 2013 calendar years. His overall summary was as a top performer, who either "Far Exceeds Expectations," or "Consistently Exceeds Expectations." (Tr. 42-43.)

A coworker of Applicant's testified. He has known Applicant since 2008, has been in the defense industry since 1982, and has a Top Secret clearance. He considers Applicant to be a person of "very high character, trustworthy, reputable." He trusts Applicant "completely with the level of security we have at our job." The witness recommended Applicant for a position of trust. (Tr. 19-30.)

Applicant is also going to graduate school at the same time he is working full time. He submitted a transcript showing that he is in good standing at school, with a cumulative 3.91 GPA. (Applicant Exhibit D; Tr. 45-46.)

Policies

Security clearance decisions are not made in a vacuum. 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 as appropriate 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 AG ¶ 2 describing the adjudicative process. The administrative judge's over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, "Any 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, "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, and has the ultimate burden of persuasion as to obtaining 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination 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

Paragraph 1 (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. Drugs are defined as mood and behavior altering substances, and include: (1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and (2) inhalants and other similar substances; Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

I have considered the disqualifying conditions under AG ¶ 25 and especially considered the following:

- (a) any drug abuse; and
- (g) any illegal drug use after being granted a security clearance.

I have studied all of the mitigating conditions under AG ¶ 26 and especially considered the following:

- (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.

Applicant used marijuana less than five times when at college between 2003 and 2007. He had a relapse and used marijuana once in 2012, after receiving a security clearance. Both of the disqualifying conditions have application to Applicant's case.

Applicant has, however, overcome the Government's case. His use was infrequent, the vast majority happened several years ago, and it is very unlikely to recur. He has always been truthful with DoD about his use, and credibly states that he will not use marijuana in the future. He no longer associates with his friends from college, and submitted a signed statement of intent with automatic revocation of clearance for any violation. Guideline H is found for Applicant.

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 relevant circumstances. 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. The administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. The discussion under Guideline H, above, applies here as well. As stated, Applicant used marijuana a handful of times, most of it when he was in college in his early 20s. He has matured, and his testimony, that of his witness, and his evidence shows a talented and able person who is more than willing to abide by security rules. Based on the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is a low likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his drug involvement. Accordingly, the evidence supports granting his request for 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

Subparagraphs 1.a and 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 eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge