



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



In the matter of:)
)
) ISCR Case No. 14-04821
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Strzelczyk, Esquire, Department Counsel
For Applicant: Jacob Ranish, Esquire

11/15/2015

Decision

RIVERA, Juan J., Administrative Judge:

Between 2006 and December 2013, Applicant illegally purchased and used marijuana. He has made lifestyle changes, and signed a statement of intent with automatic revocation of clearance for any violation. He clearly understands the adverse consequences he will face if he is ever involved in the use of illegal drugs. 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 March 12, 2014. The Department of Defense (DOD) issued him a Statement of Reasons (SOR) alleging security concerns under Guideline H (drug involvement) and Guideline E (personal

conduct) on December 22, 2014.¹ Applicant answered the SOR on January 10, 2015, and elected to have his case decided on the written record in lieu of a hearing. After receipt of the Government's File of Relevant Material (FORM), dated February 27, 2015, Applicant requested a hearing before an administrative judge. His counsel entered his appearance on April 2, 2015. The case was assigned to me on June 9, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 17, 2015, scheduling a hearing for July 20, 2015.

At the hearing, the Government offered two exhibits (GE 1 and 2). Applicant testified, presented the testimony of two witnesses, and submitted four documents for consideration in my decision-making process (AE 1 through 4). All exhibits were admitted without objection and made part of the record. DOHA received the hearing transcript (Tr.) on July 27, 2015.

Procedural Issue

In the April 2015 FORM, The Government moved to amend the SOR by withdrawing SOR ¶ 2 in its entirety. (Appellate Exhibit 1) At the hearing, the Government ratified its withdrawal of SOR ¶ 2. I granted the motion.

Findings of Fact

In his response to the SOR, Applicant admitted the factual allegations in SOR ¶ 1.a and 1.b. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence, and having considered Applicant's demeanor while testifying, I make the following additional findings of fact:

Applicant is a 26-year-old financial statements senior auditor. He graduated from high school in 2007, received his bachelor's degree in May 2011, and completed his master's degree in December 2011. He has never been married, and he does not have any children.

Applicant has been working for his current employer, a federal contractor, since August 2012. He submitted his first SCA in March 2014. Applicant disclosed in his March 2014 SCA that he illegally used marijuana from about August 2006 until December 2013. He started using marijuana while in high school, and most of his marijuana use occurred during his freshman year in college. Applicant used marijuana approximately 40 times between 2006 and December 2013, and estimated that about 35 of those instances happened between high school and his first year of college. He attributed his use of marijuana to his immaturity, his desire to be accepted in his college

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.

fraternity social setting, and his desire to fit in with his peers. Applicant also illegally purchased marijuana approximately 10 times during the 2006 to December 2013 period.

Applicant was hired for an accounting internship during his junior year in college. He worked 40 hours a week among dedicated professionals, and that experience opened his eyes. He realized that to be competitive and do well in college and professionally, he needed to do his best and focus on his grades and good behavior. After his internship, Applicant only used marijuana twice. He credibly testified that the last time he illegally used marijuana was at a party in December 2013, and he regretted it immediately.

Applicant has known his girlfriend since 2011. They are in a stable relationship and currently live together. She has never smoked marijuana and is adamantly against the illegal use of any drugs. After Applicant told his girlfriend about his use of marijuana in 2013, she was upset and stopped talking to him. Applicant promised her that he will never use marijuana in the future.

After college, Applicant moved from his home state (where we went to high school and college) to the state where he currently works and resides. He credibly testified that he no longer associates with his marijuana-using friends and associates. He has changed his lifestyle to fit in with his current professional work environment and with his live-in girlfriend. He no longer considers the use of illegal drugs part of his life. In June 2015, Applicant underwent a biopsychosocial assessment conducted by a licensed social worker who is also a substance abuse professional and a certified substance abuse counselor. In the counselor's opinion, Applicant is committed to not using marijuana again. (AE 1)

Applicant expressed remorse and regret for his past illegal use of marijuana. He promised that he will never use illegal drugs in the future. To demonstrate his commitment, he signed a statement of intent with automatic revocation of clearance for any violation. He believes that he has invested too much in his career, his profession, and his relationship to risk losing it all because of the use of drugs.

Applicant's employer has a policy against its employees using illegal drugs. Applicant disclosed to his supervisor that the approval of his clearance was delayed because of issues related to his past use of marijuana. Applicant's supervisors lauded his dedication, reliability, judgment, and work ethic. He is considered to be a professional employee who exceeds performance expectations. His supervisors endorse his eligibility for a security clearance. They do not believe that Applicant's past use of drugs is reflective of the character he has demonstrated in his current working and professional environment.

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:

[u]se 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 raise a security concern and may be disqualifying in this particular case: “(a) any drug abuse;”² and “(c) illegal drug possession . . . purchase . . . or possession of drug paraphernalia.” Between 2006 and December 2013, Applicant illegally purchased (ten times) and used marijuana (40 times). AG ¶¶ 25(a) and 25(c) are applicable.

AG ¶ 26 provides two 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; 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.

Both mitigating conditions apply and mitigate the drug involvement security concerns. Applicant’s illegal drug-related behavior occurred mostly during high school and his freshman year in college. He credibly testified that his most recent use occurred in December 2013.

Applicant has made lifestyle changes and avoids associating with his past drug-using friends and contacts. He is living in a different state, and resides with his girlfriend who does not condone the use of illegal drugs. They are in a stable relationship and have new professional friends and acquaintances that do not use illegal drugs. Moreover, Applicant signed a statement of intent with automatic revocation of clearance for any violation.

Applicant disclosed to his supervisors his past use of illegal drugs. His company has a policy against its employees using illegal drugs. However, because of his excellent performance and professional behavior, his supervisors endorsed his eligibility for a clearance.

Applicant disclosed his illegal use of marijuana in his 2014 SCA. He acknowledged his mistakes and attributed them to his inexperience and desire to be

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.”

accepted and fit in with his college friends. He now understands the adverse criminal and security clearance consequences that he will face if he is involved with any illegal drugs in the future. He believes that he has invested too much in his education, relationship, and profession to risk it all by using illegal drugs.

Considering the evidence as a whole, I find that Applicant's past use of illegal drugs are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and judgment.

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 is a 26-year-old employee of a defense contractor. This is his first security clearance application. He was honest and forthcoming in his SCA and disclosed his past illegal use marijuana. He is considered to be an excellent employee who makes significant contributions to his employer. He was lauded for his work ethic, motivation, intelligence, professionalism, and dedication.

Applicant promised that he will never consume illegal drugs in the future. His period of abstinence, his change of lifestyle, his work performance, and references' statements give substance to his promise. He clearly understands the possible adverse consequences he will face if he is ever involved in the use of illegal drugs. He specifically understands that he could be fired from his job, and his eligibility for a security clearance may be revoked. After weighing all the facts and circumstances, in the context of the whole person, I conclude that Applicant has mitigated the drug involvement security concerns.

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 and 1.b:	For Applicant
Paragraph 2, Guideline E:	Withdrawn

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