



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



In the matter of:)
)
) ISCR Case No. 18-00041
)
)
Applicant for Security Clearance)

Appearances

For Government: Allison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

01/23/2019

Decision

DAM, Shari, Administrative Judge:

Applicant mitigated the drug involvement and substance misuse security concerns. National security eligibility for access to classified information is granted.

History of Case

On January 26, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline H (Drug Involvement and Substance Misuse).

Applicant answered the SOR in writing on February 27, 2018 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to another administrative judge on August 3, 2018, and reassigned it me on October 3, 2018. DOHA issued a Notice of Hearing on October 18, 2018, setting the hearing for November 7, 2018. Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence. All exhibits were admitted without objection. Applicant testified but did not offer any exhibits. DOHA received the hearing transcript (Tr.) on November 16, 2018. The record remained open until December 14, 2018, to give Applicant an opportunity to provide exhibits. He timely submitted six

documents that I marked as Applicant Exhibits (AE) A through F. Department Counsel did not object to them, and they are admitted into evidence.

Findings of Fact

In his Answer to the SOR, Applicant admitted the allegations in ¶¶ 1.a through 1.e. He denied the allegation in ¶ 1.f. His admissions are incorporated into these findings.

Applicant is 27 years old and recently engaged. After graduating from high school in 2009, he enlisted in the U.S. Army. He served on active duty for four years and in the Army Reserve for one year, until 2014, when he was honorably discharged as an E-4. While serving, he deployed to the Middle East from July 2012 to April 2013. He received a Purple Heart, a Good Conduct Medal, and an Army Commendation Medal during his service. He was granted a Top Secret security clearance in 2009 after entering the Army. After leaving the Army, he attended college fulltime from 2013 to 2014. (Tr. 15-18, 21, 23)

After college, Applicant worked in private industry. In May 2015, he started his current position with a defense contractor. His performance evaluations have been good and resulted in merit pay increases. His fiancé is aware of this proceeding and the underlying security concerns. (Tr. 18-20)

In April 2015, Applicant submitted a security clearance application (SCA). In it, he disclosed that he had used marijuana and cocaine. (GE 2) During an investigative interview in October 2016, he discussed more fully his illegal drug use. While testifying he stated that he used marijuana less than five times prior to joining the Army in 2009. While on active duty, he used marijuana once in September 2012 after he was injured and lost two friends in combat. (Tr. 21-23; GE 4)

After leaving military service, Applicant started working as an electrician for a private company for about 18 months. Between November 2014 and January 2015, he used marijuana about 15 times and then stopped. (Tr. 22)

Applicant used cocaine for the first time in May 2012 while he was in Italy and prior to deployment. He was with other soldiers at the time. He then used cocaine between five and ten times while deployed to the Middle East. He was a machine gunner and ingested it to stay awake during long combat missions. He obtained the drugs from a local citizen. (Tr. 25-26)

While in the Middle East, Applicant also purchased and used anabolic steroids for one month. He has not used any other illegal substances and has no intention to use them in the future. (Tr. 30, 43)

Applicant denied that he used cocaine after submitting his April 2015 SCA, although he stated that he had during his interview. He said that he was confused about dates of his usage, but was certain that he did not use illegal substances months before starting his current job in April 2015. (Tr. 29-29)

Applicant has changed his life since leaving military service. He is engaged and purchased a home. He no longer associates with people who use drugs. He spends time with his family and is involved in community outreach programs. He has never tested positive for drugs. (Tr. 30-31)

Applicant explained that he also used cocaine to help medicate his post-traumatic stress disorder (PTSD) that he began suffering during service. After returning to the United States from his deployment, he saw a therapist once in 2013. In 2014, he started attending a group for veterans who have PTSD that met on his college campus. He went to the group weekly for two months. He stopped when he left college. In February 2016, he started seeing a psychiatrist who prescribed an antidepressant for PTSD. He took the medication for about eight months and then stopped. In October 2017, he saw his primary care physician who recommended that he resume taking an antidepressant, which he has been doing. He also stays in contact with a person he met at the group therapy meetings for support. (Tr. 32-40)

Applicant submitted two letters of recommendation. Applicant's former Commander for two years wrote that Applicant "was an exceptional performer . . . a great teammate, and served his country honorably." (AE A) Based on his observation of Applicant during combat, he has no reservations about Applicant's ability to handle sensitive information. (AE A) A soldier, who served with Applicant, stated that Applicant "was a charismatic, dependable, and hard worker, even when faced with adverse condition." (AE B)

Applicant provided performance evaluations from 2016 and 2017. They document his successful work, potential, and good attitude. (AE C, D, E, F)

Policies

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which were effective within the DOD on June 8, 2017.

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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(c) describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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 national security eligibility will be resolved in favor of the 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 says that an “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 applying for national security eligibility seeks to enter 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 national security eligibility. 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 or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline H: Drug Involvement and Substance Misuse

AG ¶ 24 describes the security concern involving drug involvement and substance misuse as follows:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *Controlled substance* means any "controlled substance" as

defined in 21 U.S.C. 802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

AG ¶ 25 sets out conditions that could raise a security concern. Three may be disqualifying in this case:

- (a) any substance misuse (see above definition);
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant admitted that he illegally purchased and used marijuana, cocaine, and anabolic steroids periodically from October 2007 to January 2015. Some of that time, he held a security clearance. The evidence established the above disqualifying conditions.

Conditions that could mitigate drug involvement and substance misuse security concerns are provided in AG ¶ 26. The following are potentially applicable:

- (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) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:
 - (1) disassociation from drug-using associates and contacts;
 - (2) changing or avoiding the environment where drugs were used; and
 - (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

The last time Applicant used an illegal substance, marijuana, was in January 2015, prior to submitting his April 2015 SCA. He used marijuana once while he was deployed to a combat zone after being injured and losing friends. He also used cocaine and anabolic steroids during the deployment from 2012 to 2013. He used cocaine to stay awake while on missions. His last usage occurred over three years ago and does not cast

doubt on his current trustworthiness. The evidence establishes mitigation under AG ¶ 26(a).

Applicant acknowledged his past drug involvement and substance misuse. In early 2016, he received treatment and medication for PTSD, an underlying cause of his drug use. Since October 2017, he has been under the care of his primary care physician for his medical issues and has continued to take appropriate medication, as prescribed. He no longer associates with people who use illegal drugs and has changed his priorities. He emphasized that he has no intention to use illegal drugs in the future, but he did not sign a statement confirming his intention. The evidence establishes partial mitigation under AG ¶¶ 26(b)(1) and (2), but not under AG ¶ 26(b)(3).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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(d):

- (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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable 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. I have incorporated my comments under Guideline H in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

After observing Applicant's demeanor and listening to his testimony, I found him candid and honest. He disclosed his illegal drug use in his 2015 SCA. While not condoning his previous drug abuse, he explained that a significant portion of it occurred while deployed to a combat zone. He is now engaged and purchased a house. He is addressing his PTSD. He understands the ramifications that future drug misuse could have on his employment. Given these factors, letters of recommendation from two individuals with whom he served, and the fact that he voluntarily stopped using all illegal drugs in January 2015, I do not believe that he will engage in similar conduct in the future.

Overall, the record no longer raises doubt as to Applicant's present eligibility and suitability 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 the Directive, are:

Paragraph 1, Guideline H:	FOR APPLICANT
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Subparagraphs 1.a through 1.f:	For Applicant
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Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to continue Applicant's access to classified information. National security eligibility is granted.

SHARI DAM
Administrative Judge