



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



In the matter of:)	
)	
)	ADP Case No. 18-00188
)	
Applicant for Public Trust Position)	

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

03/29/2019

Decision

Curry, Marc E., Administrative Judge:

Applicant failed to mitigate the concerns posed by his history of marijuana use and his falsification of his security clearance application. Eligibility to continue working in a public trust position is denied.

Statement of the Case

On May 4, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the trustworthiness concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national interest to grant him a position of trust. The DOD CAF took the action 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 Security Executive Agent Directive 4, effective June 8, 2017.

On May 21, 2018, Applicant answered the SOR, admitting the allegations, and requesting a decision based on the administrative record instead of a hearing. On June 19, 2018, Department Counsel prepared a File of Relevant Material (FORM). Applicant

received a copy of the FORM on July 31, 2018, and was informed that he had through September 14, 2018 to file a response. He did not file a response. The case was assigned to me on September 20, 2018.

Findings of Fact

Applicant is a 26-year-old single man with a high school diploma. He has been working for a defense contractor as a water blaster since 2013. (Item 4 at 10)

Applicant has been smoking marijuana approximately once every three months since he was 20 years old. He did not disclose his marijuana use, as required on his 2016 SCA, explaining that he was worried that if he did so, he would lose his job. (Item 4 at 11)

Applicant continued to use marijuana for approximately 18 months after completing his security clearance application. His last use was in December 2017. He has no intention of using marijuana in the future. (Item 4 at 2)

Policies

When evaluating an applicant's suitability for a trustworthiness position, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. 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 the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. 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. 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 favorable trustworthiness determination.

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d).¹

¹ The factors under AG ¶ 2(d) are as follows:

(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

Analysis

Guideline H, Drug Involvement and Substance Abuse

The trustworthiness concerns under this guideline are set forth in AG ¶ 18:

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.

Applicant's history of marijuana use triggers the application of AG ¶ 25(a), "any substance misuse." The following mitigating condition under AG ¶ 26 is potentially applicable:

(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 are 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.

Applicant contends he will never use marijuana again. However, he did not memorialize his intent not to use it again in a signed, sworn statement. Moreover, he provided no information about whether he will disassociate himself from his marijuana-using friend, or whether he will avoid the environment where marijuana is used. Consequently, AG ¶ 26(b) is only applicable insofar as he acknowledged his history of marijuana use and expressed an intent not to use in the future.

Applicant's last use of marijuana was in December 2017, 18 months after he completed SCA. Under these circumstances, it is too soon to conclude that his

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.

history of marijuana use no longer poses a trustworthiness concern. Applicant failed to mitigate the trustworthiness concern.

Guideline E, Personal Conduct

Under this guideline, “[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information.” Applicant’s falsification of his 2016 SCA triggers the application of AG ¶ 16(a), “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.”

Applicant falsified his SCA because he was afraid he would lose his job if his employer discovered he had been using marijuana. Intentionally omitting or falsifying relevant information to conceal derogatory information from a trustworthiness application out of fear of losing one’s job does not mitigate falsification. None of the mitigating conditions apply. Applicant has failed to mitigate the personal conduct trustworthiness concern.

Whole-Person Concept

I considered the whole-person concept factors in my analysis of the disqualifying and mitigating conditions, and they do not warrant a favorable conclusion.

Formal Findings

Formal findings for 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
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline E:	AGAINST Applicant
Subparagraphs 2.a – 2.b:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of the United States to grant Applicant eligibility for a position of trust. Eligibility for a position of trust is denied.

Marc E. Curry
Administrative Judge