



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



In the matter of:)
)
) ISCR Case: 18-00413
)
Applicant for Security Clearance)

Appearances

For Government: Rhett Petcher, Esquire, Department Counsel
For Applicant: *Pro se*

12/21/2018

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant mitigated the drug involvement and substance misuse security concerns. Based upon a review of the pleadings and exhibits, national security eligibility is granted.

Statement of Case

On March 16, 2018, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline H, drug involvement and substance misuse. The action was taken under DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines*, effective June 8, 2017.

Applicant answered the SOR on April 9, 2018, and requested a hearing before an administrative judge. However, on August 15, 2018, he withdrew that request and asked for a decision on the record without a hearing. Department Counsel submitted the Government's written case on August 30, 2018. A complete copy of the file of relevant

material (FORM) was sent to Applicant, including documents identified as Items 1 through 5. He was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on September 17, 2018. He responded to the FORM in a letter dated September 17, 2018, marked Applicant Exhibit (AE) A. Applicant expressed no objections in AE A to Items 1 through 5, which are admitted into evidence as Government Exhibits (GE) 1 through 5. Department Counsel had no objections to AE A and it is admitted. The case was assigned to me on December 17, 2018.

Findings of Fact

Applicant admitted all of the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 25-year-old employee of a government contractor. He graduated college in spring 2016. He listed no spouse or children. (GE 4.)

In July and August 2014, Applicant was employed through a "co-op work assignment" with a government contractor. During that internship-like experience, he completed a security clearance application and a security clearance was eventually granted. Applicant separated from the employer in August 2014 before any alleged drug use, but through an administrative failure, the Joint Personnel Adjudications System (JPAS) was not updated to reflect the separation. Applicant was administratively removed from JPAS in January 2017, after the company did an internal audit. The facility security officer (FSO) certified that these administrative errors occurred. (Answer.)

Applicant was stressed and sleep deprived due to the demands of his rigorous college schedule. He was also young and immature. Between September 2014 and April 2016, he used marijuana approximately three times monthly in social settings with friends. He tried mushrooms twice with friends between May 2015 and August 2015. He was arrested in September 2014 and charged with possession of marijuana and defiant trespass. He pled guilty to the lesser charge of disorderly conduct. He was fined \$300 for this offense. (Answer; GE 3; GE 4.)

Applicant was hired by the government contractor for whom he previously worked in May 2017. He completed a new security clearance application on June 28, 2017. He voluntarily disclosed all of his drug use on that security clearance application. (GE 3.)

Applicant now avoids all environments where drugs are used and promised to continue to do so. He signed a statement of intent to abstain from illegal drug use. (Answer.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (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 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. Under Directive ¶ E3.1.15, 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 EO 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline H, Drug Involvement

AG ¶ 24 expresses the security concern pertaining to Drug Involvement:

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.

I have considered all of the disqualifying conditions under Drug Involvement AG ¶ 25, and the following are potentially applicable:

- (a) any drug abuse;
- (c) illegal drug possession, 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 the allegations of the September 2014 arrest for marijuana use, marijuana use from September 2014 to April 2016, and mushroom use from May 2015 to August 2015. Applicant's admissions raise security concerns under AG ¶¶ 25(a) and 25(b). AG ¶ 25(f) is not established as Applicant was not "granted access to classified information or holding a sensitive position" within the plain meaning of those terms at the time he used marijuana or mushrooms.

I have considered the mitigating conditions under Drug Involvement AG ¶ 26, and 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.

Applicant's illegal drug use spanned over a two-year period, while in college. During the past two years, he demonstrated his serious commitment to abstinence from illegal substances. He ceased using all drugs prior to accepting employment with a government contractor, his first professional job. He disassociated himself from drug-using friends and associates. Applicant's drug use occurred largely while he was attending educational institutions. He is now in the work-force and no longer attends school. Thus, he has changed his environment. While the Directive does not define what constitutes "an appropriate period of abstinence" under AG ¶ 26(b)(3), his candor about his illegal drug abuse leads me to accept as credible his assertions of no future intent to use marijuana or other illegal substances under any circumstances. Applicant has demonstrated sufficient intent not to use any illegal drugs in the future. He signed a statement of intent. He has matured and understands that any illegal drug involvement is incompatible with his defense contractor employment. Applicant has presented sufficient evidence to mitigate the Government's concerns under AG ¶¶ 26(a) and 26(b).

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 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. Applicant was irresponsible

and did not recognize the seriousness of his actions when he used marijuana and mushrooms in college. He has now matured. He has not used illegal substances for more than two years after coming to the revelation that there was no room for illegal substances in his future professional life. His changes are permanent and the likelihood of recurrence is extremely low. The potential for pressure, coercion, or duress is eliminated by Applicant's abstinence. Overall, the record evidence leaves me without doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He met his burden to mitigate the security concerns arising under the guideline for drug involvement and substance misuse.

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 F: FOR APPLICANT

Subparagraphs 1.a through 1.c: 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 national security eligibility and a security clearance. National security eligibility is granted.

Jennifer I. Goldstein
Administrative Judge