



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



In the matter of:)
)
) ISCR Case No. 18-01946
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

January 28, 2019

Decision

Lokey Anderson, Darlene D., Administrative Judge:

Statement of the Case

On November 20, 2017, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 1.) On August 22, 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 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) effective within the DoD after June 8, 2017.

Applicant answered the SOR on September 4, 2018, and requested a hearing before an administrative judge. The case was assigned to me on October 29, 2018. The Defense Office of Hearings and Appeals issued a notice of hearing on November 15, 2018, and the hearing was convened as scheduled on December 4, 2018. The Government offered two exhibits, referred to as Government Exhibits 1 and 2, which

were admitted without objection. The Applicant offered no exhibits at the hearing. The record remained open until close of business on December 11, 2018, to allow Applicant the opportunity to submit supporting documentation. Applicant submitted three Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits 1 through 3, which were admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on December 13, 2018.

Findings of Fact

Applicant is 27 years old. He is not married and has no children. He has a Bachelor's of Science degree in Electrical Engineering. He is employed by a defense contractor as an Electrical Engineer. He is seeking to obtain a security clearance in connection with his employment.

Guideline H - Drug Involvement and Substance Misuse

The Government alleges that the Applicant has used controlled substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose, which can raise questions about an individual's reliability and trustworthiness.

Applicant has a history of illegal drug use that includes his use of marijuana from about July 2006 to at least June 2017; cocaine use from about July 2010 to July 2017; and ecstasy use from about July 2010 to July 2012. He has also purchased marijuana in June 2017.

Applicant attended college from 2009 to 2016, when he graduated. During college he states that he used marijuana, cocaine, and ecstasy at varying frequencies for recreational purposes. As a rough estimate, he believes he used marijuana in high school from eight to ten times and in college probably five to eight times. After college, he used marijuana three times while working for a defense contractor. (Tr. p. 29.) In regard to cocaine, he believes he used it five to ten times in high school and the same frequency in college. He used ecstasy two or three times at events in high school and about the same frequency in college. (Tr. p. 31.) Applicant also purchased marijuana on two occasions, once in college, and once in June 2017. He states that he also purchased cocaine in 2011.

After graduating from college, Applicant went straight to his position with his current employer which started in August 2016. Applicant knew at that time that he would be required to apply for a security clearance at some point as it was mandatory for all employees. He also knew that his company had a zero tolerance policy regarding the use of illegal drugs. (Tr. pp. 20 - 21.) After being hired by the company, and after working there over a year, Applicant used marijuana in June 2017 on three occasions with the same person. He also used cocaine with his cousin in July 2017. (Tr. p. 28.) Applicant states that he last used ecstasy in July 2012, and has not used ecstasy since college.

Applicant submitted a letter of intent dated December 7, 2018, to declare his abstinence from the use, purchase, possession, manufacturing and distribution of any illegal substance. The letter further states that any future misuse of any illegal drug will be grounds for immediate revocation of his national security eligibility. (Applicant's Post-Hearing Exhibit C.)

A letter from the Applicant's supervisor dated December 5, 2018, indicates that he hired the Applicant and that since then Applicant has been an excellent electrical engineer. He is described as talented and hard-working and can always be counted on to get to the work done. He is said to be professional and respectful of his colleagues. His supervisor recommends him for a security clearance. (Applicant's Post-Hearing Exhibit A.)

A performance review of the Applicant for the period from April 1, 2016, through March 31, 2017, reflects that he "meets all job requirements." (Applicant's Post-Hearing Exhibit B.)

Policies

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 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, administrative judges apply the guidelines 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. According to AG ¶ 2(a), 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.

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.

Directive ¶ E3.1.14, requires the Government to present evidence that establishes 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 applies for access to classified information 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 access to classified information. 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 information.

Section 7 of EO 10865 provides that adverse decisions shall be “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 and Substance Misuse

The security concern relating to the guideline for Drug Involvement and Substance Misuse is set forth at AG ¶ 24:

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.

The guideline at AG ¶ 25 contains three conditions that could raise a security concern and may be disqualifying:

- (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.

The guideline at AG ¶ 26 contains conditions that could mitigate security concerns. None of the conditions are 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.

None of the mitigating factors demonstrate full mitigation. Applicant is a young and immature man, with little experience in the defense industry. Although he is a 27 year-old man, he is a fairly recent college graduate, who used a number of illegal drugs while in college and continued to use them after he graduated, and after being hired to work in the defense industry. His last use of marijuana and cocaine are considered recent. Applicant was aware of his company's zero tolerance drug policy as well as DoD policy, but chose to defy the policies by using marijuana and cocaine after being hired by and working for a defense contractor. There is no excuse for this misconduct.

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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guideline H in my whole-person analysis. Applicant is well respected on the job and is considered to be an excellent engineer. However, he has failed to provide sufficient evidence to demonstrate that he meets the qualifications for a security clearance.

Overall, the record evidence leaves me with many questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Drug Involvement and Substance Misuse security concern.

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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge