



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
XXXXXXXXXXXXXXXXXXXXXXXXX) ISCR Case No. 18-02202
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

03/27/2019

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case.¹ Applicant’s clearance is granted.

On 15 October 2018, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising security concerns under Guideline H, Drug Involvement and Substance Misuse.² Applicant timely answered the SOR, requesting a decision without hearing by the Defense Office of Hearings and Appeals (DOHA). The record in this case closed 13 February 2019, when Applicant’s response to the FORM was due. Applicant provided no additional information. DOHA assigned the case to me 8 March 2019.

¹Consisting of the File of Relevant Material (FORM), Items 1-3.

²DoD 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* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) of Security Executive Agent Directive 4, implementing new AG, effective with any decision issued on or after 8 June 2017.

Findings of Fact

Applicant admitted the SOR allegation. He is a 24-year-old systems engineer employed by a defense contractor since August 2016. This is his first real job after graduating college in May 2016. He has not previously held a clearance.

During a May 2018 interview with a Government investigator (Item 3), Applicant disclosed that he had used marijuana in October 2016 (vaporizer), August 2017 (pipe), November 2017 (bong), and January 2018 (pipe) each time in social settings with friends. He admitted to succumbing to peer pressure on each occasion, but stated that marijuana use actually makes him sick. Moreover, He does not normally smoke because his grandparents died from lung cancer and he was training for a marathon. He was aware that marijuana use is illegal, and is also inconsistent with holding a clearance. He stated that continuing to use marijuana was not worth risking his job, and he had no intent to use marijuana in the future.

Applicant disclosed his then-current marijuana use on his September 2017 clearance application (Item 2). At the time, he was unwilling to commit to not using marijuana in the future. He disclosed his additional marijuana uses during his May 2018 interview.

In his November 2018 Answer (Item 1), Applicant admitted his marijuana use, and stated that he no longer experiences any social pressure to use marijuana. He signed a statement of intent as contemplated by the AG.

Applicant submitted no work or character references, and provided no evidence of any community involvement.

Policies

The AG list factors to evaluate a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also show a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(d). The applicability of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific guidelines should be followed when a case can be measured against them, as they are policy guidance governing the grant or denial of a clearance. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline H (Drug Involvement and Substance Misuse).

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 applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the required judgment, reliability, and trustworthiness of those who must protect national interests as their own. The “clearly consistent with the national interest” standard compels deciding any reasonable doubt about an Applicant’s suitability for access in favor of the Government.³

Analysis

The Government established a case for disqualification under Guideline H, by demonstrating Applicant’s illegal drug abuse four times between October 2016 and January 2018. He also initially would not commit to abstaining from future marijuana use.⁴ However, Applicant mitigated the security concerns. After initially failing to commit to drug abstinence, Applicant has twice stated his commitment to drug abstinence in the future. He has used no illegal drugs since January 2018.

Drug involvement mitigating conditions give substantial support to Applicant. His illegal drug abuse was infrequent, although not distant. He credibly states that the use is unlikely to recur.⁵ The issue is not so much the experimental drug use, but his recognition that drug use is inconsistent with holding a clearance. Moreover, he has committed to abstaining from future drug use, and provided a statement of intent within the contemplation of the AG.⁶ I consider that statement sufficient indication that Applicant understands the potential consequences of any future drug use. I conclude Applicant is unlikely to abuse illegal drugs in the future. Accordingly, I resolve Guideline H for Applicant.

Formal Findings

Paragraph 1. Guideline H:	FOR APPLICANT
Subparagraph a:	For Applicant

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴¶25(a) any substance misuse; (c) illegal possession of a controlled substance . . . ; (g) . . . failure to clearly and convincingly commit to discontinue such misuse.

⁵¶26(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 [Emphasis supplied];

⁶¶26(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: . . . (3) 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;

Conclusion

Under the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

JOHN GRATTAN METZ, JR
Administrative Judge