



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 18-02657
)	
Applicant for Security Clearance)	

Appearances

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

07/17/2019

Decision

BORGSTROM, Eric H., Administrative Judge:

Applicant did not mitigate the security concerns raised about his drug involvement and substance misuse. Eligibility for access to classified information is denied.

Statement of the Case

On November 20, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H (drug involvement and substance misuse). The DOD acted 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 *National Security Adjudicative Guidelines* implemented by the DOD on June 8, 2017.

Applicant responded to the SOR on December 13, 2018, and he requested a hearing. On April 30, 2019, a notice of hearing was issued, scheduling the hearing for May 15, 2019. The hearing proceeded as scheduled. Applicant testified and submitted three documents, which I admitted as Applicant Exhibits (AE) A through C, without objection. Department Counsel submitted two documents, which I admitted as Government Exhibits (GE) 1 and 2, without objection. On May 29, 2019, Applicant

submitted an email and two attachments, which I admitted as AE D through F, without objection. DOHA received the transcript on May 31, 2019.

Findings of Fact

The SOR alleges drug involvement and substance misuse security concerns based upon Applicant's purchase and use of marijuana between May 2003 and March 2018 (SOR ¶¶ 1.a. and 1.b.) and his expressed intent to continue to use marijuana (SOR ¶ 1.c.). In his response to the SOR, Applicant admitted SOR ¶¶ 1.a. and 1.b., and he denied SOR ¶ 1.c. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 28 years old. In December 2014, he earned a bachelor's and a master's degree in computer science. Since April 2015, he has been employed as a software engineer with a DOD contractor. He is not married, and he does not have any children. (GE 1; Tr. 24)

On his April 2018 security clearance application (SCA), Applicant reported that he used marijuana "[e]very couple of months on average socially" between May 2003 and March 2018. He also admitted that he had purchased marijuana on multiple occasions between May 2005 and September 2017. Section 23 further queried, "Do you intend to use this drug or controlled substance in the future?," he answered "Yes." He also responded, "I will almost certainly purchase some [marijuana] at some future point in my life." (GE 1; Tr. 28)

During his July 2018 security interview, Applicant confirmed his illegal drug history as delineated in his SCA. From May 2003 to September 2009, he used marijuana about two to three times a year. From about September 2009 to September 2010, he used marijuana approximately four times a year. From September 2010 to May 2011, he did not use marijuana. From about 2012 to December 2014, he used marijuana about every weekend. From December 2014 to March 2018, he used marijuana about two to three times a year. He typically used marijuana with his former roommate or his brother. He sometimes purchased marijuana from friends or family members, and at times others shared marijuana with him. (GE 1; Tr. 24)

During his security interview, Applicant acknowledged that his marijuana use likely violated his employer's policies. He further stated that he would likely continue to use marijuana even if inconsistent with his possession of a DOD security clearance. At the time of his security interview, Applicant continued to possess marijuana he had purchased in September 2017, and he expressed his intent to use and purchase marijuana in the future. As of July 2018, he continued to associate with his former roommate, his brother, and others with whom he had previously used marijuana. (GE 2)

Between his July 2018 security interview and his December 2018 Answer, Applicant experienced a change in perspective about his future marijuana use and purchase. He testified that his mindset began to evolve after his security interview. In his Answer, he explained that his previously viewpoint mirrored his understanding of nationwide trends towards the legalization of recreation marijuana, but he now

understood the gravity of substance misuse in the context of his security clearance eligibility. (Answer; AE A; Tr. 12, 51-52)

At hearing, Applicant confirmed his marijuana use from May 2003 to March 2018 and his marijuana purchase from May 2005 to September 2017. He testified that he no longer associates with most of the individuals with whom he previously used marijuana. Applicant continues to associate with his brother and his former roommate, both of whom used marijuana with Applicant in the past. In May 2019, he attended a social gathering at his brother's house where individuals used marijuana outside the house while Applicant remained inside. Applicant had previously used marijuana at social gatherings at his brother's house on multiple occasions in the past. (Tr. 25-26, 42)

In addition to reducing his contacts with individuals with whom he had used marijuana, Applicant has experienced several other changes in his life in recent years. He moved in mid-2018, so he no longer lives with the roommate with whom he had used marijuana. His job responsibilities have dramatically expanded in the last year, and he has been more focused on his career. During the past year, he has been studying for a technical certification to increase his career opportunities, and he has undertaken new hobbies and activities. In a post-hearing statement, Applicant explained that he had "evolved substantially as a person" in recent years. (Tr. 21-25, 41-43; AE D)

Applicant explained that when he completed his SCA, he wanted to honestly answer the questions about his drug involvement; however, the questions did not cause him to reconsider his future use and purchase of marijuana. Applicant testified that when he completed his SCA and during his security interview, he sought to answer honestly about the possibility he may use marijuana during the rest of his life, though he did not have any immediate plans to do so. He further admitted he was aware that his marijuana was illegal and in violation of his employer's policies at the time of his use. Applicant clarified the frequency of his marijuana use between 2012 and December 2014, testifying that he used marijuana approximately 15 times during this span instead of every weekend, as reported in the security interview. He also explained that there had been periods between May 2003 and March 2018 when he did not use marijuana for a year or two. He admitted that he did not realize until the DOHA hearing that even being around other individuals using marijuana was a security concern. I found Applicant's testimony credible and sincere. (Tr. 28-31, 45-46, 53-55)

Applicant has received several awards and high praise during his annual performance reviews for 2017 and 2018. His work performance, work ethic, and subject-matter expertise are well regarded by his supervisors. His salary has dramatically increased since he began his employment with the DOD contractor, and he was recently promoted. There is no evidence that any of Applicant's character references are aware of Applicant's illegal drug use and purchases. Applicant testified that he has not informed his supervisors or his facility security officer because, in part, he was concerned about the potential negative impact to his employment. (AE A-F; Tr. 33-37)

Policies

When evaluating an applicant's suitability for a security clearance, 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, 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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."

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline H, Drug Involvement and Substance Misuse

The security concern for drug involvement is set out in 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 notes several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable in this case:

- (a) any substance misuse;
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale or distribution; or possession of drug paraphernalia; and
- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

Applicant's illegal drug involvement – his illegal use and purchase of marijuana – spanned May 2003 through March 2018. On his April 2018 SCA and during his July 2018 security interview, he twice expressed his intent to continue to use and purchase marijuana, regardless of whether it was illegal, against his employer's policies, or inconsistent with possessing a DOD security clearance. The Government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 25(a), 25(c), and 25(g).

Conditions that could mitigate the drug involvement security concerns are provided under 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) provided 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 drug involvement spanned from May 2003 until at least March 2018. As of July 2018, Applicant expressed an intent to continue to use and purchase marijuana, despite knowing such conduct was illegal, violated his employer's policies, and was

inconsistent with the expectations of those possessing a security clearance. At some time between his July 2018 security interview and his December 2018 Answer, Applicant realized the gravity of his drug involvement and expressed intent to continue such conduct and the potential impact on his career. He has taken on greater responsibilities at work and endeavored to obtain a technical certification to advance his career. He moved in mid-2018, and he has disassociated from most of his drug-using friends.

The dramatic changes in Applicant's perspective, lifestyle, and environment within the last several months must be weighed against the 15-year span of his drug involvement. Furthermore, although he has disassociated from many of his drug-using friends, Applicant attended a social gathering in May 2019 where a friend and Applicant's brother used marijuana. I found Applicant's expressed intent to abstain from all drug involvement to be sincere and credible; however, it is simply too soon to conclude that his behavior was so long ago or unlikely to recur and that he has established a pattern of abstinence. AG ¶¶ 26(a) and 26(b) do not apply.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline H and the AG ¶ 2(d) factors in this whole-person analysis.

Applicant's work performance, work ethic, and subject-matter expertise are well-regarded by his supervisors and character references; however, none of these individuals is aware of his drug involvement. Applicant's knowingly and willfully violated state and federal laws and his employer's policies with his use and purchase of marijuana, and he repeatedly express his intent to continue such conduct. In the last several months, Applicant's perspective on his drug involvement has dramatically changed, and I found his expressed intent to abstain from all illegal drugs sincere. Nonetheless, taken with his continued presence in environments where illegal drugs are present and given his lengthy drug history, it is simple too early to conclude that he has established a pattern of

abstinence. Applicant has not mitigated the drug involvement and substance misuse security concerns.

Formal Findings

Formal findings for or 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
Subparagraphs 1.a.-1.b.:	Against Applicant
Subparagraph 1.c.:	For 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 national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Eric H. Borgstrom
Administrative Judge