



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



In the matter of:)	
)	
-----)	ISCR Case No. 18-02856
)	
Applicant for Security Clearance)	

Appearances

For Government: Benjamin Dorsey, Esquire
For Applicant: *Pro se*

05/30/2019

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On January 9, 2019, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H (Drug Involvement). The action was taken 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) effective within the DOD on or after June 8, 2017. In a response transmitted on January 30, 2019, he admitted the eight allegations raised and requested a determination based on the written record.

On February 21, 2019, the Government issued a File of Relevant Material (FORM) with four attachments ("Items"). The case was assigned to me on May 10, 2019. Based on my review of the case file and submissions, I find Applicant failed to mitigate drug involvement security concerns.

Findings of Fact

Applicant is a 23-year-old man who, as last documented, was anticipating graduation from undergraduate school in May 2018. (Form, Item 4) At the time he was

interviewed as part of this process, he was a part-time intramural sports supervisor. He has also held other part-time jobs typical of a university student. He has been extended an offer for a position by a defense contractor.

In about November 2010, during his freshman year in high school, Applicant first tried marijuana after a friend brought it to his home. The marijuana plant "bud" provided was sufficient to make one "blunt" suitable for smoking. (FORM, Item 4) Applicant knew using the substance was illegal, but he had a "desire to try it." (FORM, Item 4) After an unrecalled number of inhalations, he felt the drug's effects. Applicant continued to use the drug because he "enjoyed it." (FORM, Item 4) He used the drug, on average, one or two times a week until at least December 2018. (FORM, Item 4) No information regarding his drug use after that date was offered.

Before his December 2018 usage, Applicant first purchased about 3.5 ounces of marijuana. While he knew the purchase was illegal, he did so because "he wanted to." (FORM, Item 4) Initially, Applicant noted that he intended to use marijuana into the future if it was legalized, he then later stated he intended to quit using it in the future -- "after 5/2018 and college" -- to focus on work. (FORM, Item 4) At that point, he planned to "kick his habit" of marijuana use. (FORM, Item 4) He noted that he had been unaware that federal law specifically prohibits the use of illegal drugs by employees of defense contractors. Applicant concedes he was immature when he began using the drug, but represents himself now as mature. (FORM, Item 4) He considers his drug use to be voluntary and not very serious because he believes he can cease his "habit" whenever he needs to do so.

In his teens and early 20s, Applicant also tried illegal hallucinogenic mushrooms in June 2017. He used Adderall that had been prescribed to another individual from about February 2015 to about May 2017. He similarly used someone else's prescription Hydrocodone on multiple occasions in about November 2015. About twice, he recreationally used another person's Xanax, from about February 2012 to about October 2015. Throughout this time, he was aware it was illegal to use someone else's prescription medication. (FORM, Item 4) Applicant socially tried the hallucinogenic compound known as lysergic acid diethylamide (LSD), in August 2015. Before going out to socialize and party over alcoholic beverages once in February 2015, he also used cocaine.

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 used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in 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 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. Under the AG, any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national interest. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

The Government must present evidence to establish controverted facts alleged in the SOR. Under the Directive, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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. The Government reposes a high degree of trust and confidence in those granted access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard such information. Decisions shall be in terms of the national interest and do not question the loyalty of an applicant.

Analysis

The security concern for this guideline is set forth in AG ¶ 24, where it is noted that the illegal use of a controlled substance, and the use of other substances that can 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. Such use also raises questions about a person's ability or willingness to comply with laws, rules, and regulations. Here, Applicant admitted that he used multiple illegal drugs or illegally used prescription drugs between November 2010 and at least December 2018. During that time frame, he also purchased illegal substances. These admitted facts are sufficient to raise AG ¶ 25:

(a) any substance misuse . . . , and

(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

The Government's substantial evidence, as confirmed by Applicant's own admissions, raises security concerns under Guideline H. Therefore, the burden shifts to Applicant to produce evidence to rebut, explain, extenuate, or mitigate related security concerns.

Under Guideline H, conditions that could mitigate security concerns arising from drug involvement and substance misuse are enumerated. The following mitigating conditions under AG ¶ 26 potentially apply to Applicant's case:

(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;

(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.

Regarding AG ¶ 26(a), Applicant's marijuana "habit" continued from his early teenage years into his 20s. It is unclear whether he actually ceased socially using illegal drugs after college graduation or thereafter. It is shown, however, that any decision to quit marijuana use would be based, at least in part, on whether the drug continued to be classified as illegal, whether its cessation was needed to help him focus on his career, or both. His current relationship with marijuana and other drugs is unclear and left undefined, as is his relationship with both peers who use and purchase drugs and venues in which illegal drug use is accepted. What is clear is that his knowing use of illegal substances continued up to at least the time he was offered professional employment with a defense contractor. However, with scant supplemental information or argument justifying or mitigating such drug use, AG ¶ 26(a)-(b) do not apply under these facts.

Whole-Person Concept

Under the whole-person concept, one must evaluate security clearance eligibility by considering the totality of the applicant's conduct and all relevant circumstances. Consideration shall be given to the nine adjudicative process factors listed in the AG. The final determination must be an overall commonsense judgment based on 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, and conducted a whole-person

analysis based on the record. In addition to Applicant's drug use, I considered available facts related to his age, reasons for using illegal drugs or illegally using prescription medications, maturation, professional status, educational attainments, lifestyle, and future intentions regarding illegal substances.

This is not a situation involving youthful indiscretion. During his period of marijuana abuse, Applicant has matured from a young teen to a man in his mid-20s pursuing a professional position with a defense contractor. While it may be unclear whether he knew all along that marijuana use was antithetical to working for a defense contractor, it was shown he has admitted knowing some, if not all, of his drug use was patently illegal. Cases under this guideline can be reviewed with consideration of a number of factors that might prove to be mitigating or may show circumstances that were extenuating. Here, however, Applicant has simply admitted the SOR allegations with no rebuttal. Without more, drug involvement security concerns remain unmitigated.

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.h: 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 a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge