



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

)
)
)
)
)
)

ISCR Case No. 20-02674

Appearances

For Government: Tovah Minster, Esquire, Department Counsel

For Applicant: *Pro se*

July 9, 2021

Decision

ROSS, Wilford H., Administrative Judge:

On August 20, 2019, Applicant submitted his most recent Electronic Questionnaires for Investigations Processing (e-QIP). (Item 3.) On November 16, 2020, 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on June 8, 2017.

Applicant answered the SOR in writing (Answer) on December 22, 2020, and requested his case be decided on the written record in lieu of a hearing. (Item 2.) In his Answer he admitted all the allegations in the SOR, with explanations. On January 25, 2021, Department Counsel submitted the Department's written case. A complete copy

of the file of relevant material (FORM), consisting of Items 1 to 5, was provided to Applicant, who received the file on February 26, 2021.

Applicant was given 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit any additional information.

The case was assigned to me on May 25, 2021. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 35 and single. He has a bachelor's degree. Applicant worked for a defense contractor from 2009 to September 2013 when he was laid off. He was unemployed until he began working for his current employer in June 2014. Applicant has held a security clearance since 2009, and seeks to retain national security eligibility for access to classified information in connection with his employment. (Item 3 at Sections 13A and 25.)

Paragraph 1 (Guideline H – Drug Involvement and Substance Misuse)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has used illegal drugs. Applicant admitted all three allegations under this paragraph.

1.a. Applicant used marijuana at least thirteen times from 2007 through at least July 2019. According to Applicant in his Answer he used marijuana primarily while in college and during his period of unemployment. However, Applicant admitted on his most recent e-QIP using marijuana twice while working for his current employer. (Item 2, Item 3 at Section 23, Item 4 at Section 23.)

1.b. Applicant used ecstasy two times, once in December 2012 and the second time in October 2014. In his 2019 e-QIP Applicant stated, "Have not used in nearly 5 years and have no desire to use again, there is no added benefit. No longer associate with environments prone to use." (Item 2, Item 3 at Section 23.)

1.c. Applicant used marijuana twice and ecstasy once during the time that he held a Department of Defense security clearance during his current employment. Applicant was interviewed by an investigator from the Office of Personnel Management on October 23, 2019. The Report of Investigation (ROI) reports Applicant admitted that his employer had a drug use policy, but he did not know what it was. (Item 5.)

With regard to future use Applicant stated in his Answer:

I no longer associate with those that partake and avoid environments that are conducive to use. I've realized the importance of my work and the people that it impacts. I make my work a priority in my life as well as my health and wellbeing. With these factors in mind, I have no desire to continue use. I believe my honesty and being forthcoming with these violations during my investigation also express how much I value my work, my maturity, and my intentions to discontinue use.

Applicant's statements to the OPM investigator were similar to those found in his Answer. It is also noted that Applicant stated in his most recent e-QIP that he had, "No desire to use [marijuana] in future. Primary focus now is on career and better lifestyle choices. The consequences outweigh any added benefit from use." (Item 3 at Section 23, Item 5.)

Applicant did not submit any evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

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 useful 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, the administrative judge applies 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(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, "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of 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.

According to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 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.

Finally, as emphasized in Section 7 of EO 10865, “Any 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

Paragraph 1 (Guideline H – Drug Involvement and Substance Misuse)

The security concern relating to Drug Involvement and Substance Misuse is set forth 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.

I have examined the disqualifying conditions under AG ¶ 25 and especially considered the following:

- (a) any substance misuse (see above definition); and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant has a minor history of using illegal drugs. This occurred between 2007 and 2019. Altogether his use was less than 20 times. Applicant held a security clearance during part of the time in question. Both of the stated disqualifying conditions apply.

The following mitigating conditions under AG ¶ 26 have also been considered:

- (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 had not used illegal drugs for about two years when the record closed. Based on his statements in his e-QIP, to OPM, and in his Answer he understands the importance of his job and remaining drug free. He has stopped socializing with drug users and frequenting places where drugs are used. Both of the mitigating conditions apply. Paragraph 1 is found for Applicant.

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 national security eligibility and 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. Applicant engaged in minor drug use off and on for about 12 years. Sufficient time has passed since his most recent use to demonstrate rehabilitation, he has made substantial lifestyle changes, and there is little to no likelihood of recurrence. Overall, the record evidence as described above leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did 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 H:

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. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge