



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



In the matter of:)
)
) ISCR Case No. 20-02660
)
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, Esquire, Department Counsel
For Applicant: Alan V. Edmunds, Esquire, Applicant’s Counsel

September 27, 2021

Decision

CEFOLA, Richard A., Administrative Judge:

On June 7, 2018, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On March 26, 2021, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H. The action was taken under Executive Order 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 effective June 8, 2017.

Applicant answered the SOR in writing on April 7, 2021 (Answer), and requested a hearing before an administrative judge. Attached to said Answer were Exhibits (AppXs) A through N, which were subsequently admitted into evidence, without objection. Defense Office of Hearings and Appeals (DOHA) received the request on June 15, 2021. I received the case assignment on June 15, 2021. DOHA issued a Notice of Hearing on June 24, 2021, and I convened the hearing as scheduled on August 3, 2021. The Government offered Exhibits (GXs) 1 through 4, which were

received without objection. Applicant testified and offered AppXs H through N, which were admitted into evidence without objection. He also asked that the record be kept open until August 17, 2021; for the receipt of additional documentation, but nothing further was offered into evidence. DOHA received the transcript of the hearing (TR) on August 11, 2021. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR Applicant admitted the factual allegations in Paragraph 1 of the SOR, with explanations He also provided additional information, noted above, to support his request for eligibility for a security clearance.

Applicant is 62 years old, married, and has three adult children. He has a Ph.D. degree and is a “Chief Scientist.” He works for a defense contractor. Applicant has held a security clearance since 2002. (TR at page 13 line 20 to page 16 line 10, and GX 1 at pages 7 and 13.)

Guideline H – Drug Involvement

1.a. through 1.c. Applicant admits from about 1982 until 1984, while “between college and graduate school,” he used marijuana about ten times. (TR at page 16 line 20 to page 17 line 4, and at page 37 lines 20~25.) In 1990, while attending a “bachelor party,” he also used marijuana. (TR at page 38 lines 1~7.) Applicant disclosed this more recent, one time usage on his January 2012 e-QIP. (GX 2 at page 3.)

When the use of marijuana was legalized in his home state in January of 2018; and while granted access to classified information, Applicant used marijuana about 70 times from about January of 2018 to July of 2019. (TR at page 30 line 12 to page 32 line 17.) He first disclosed this usage on his June 2018 e-QIP with the following “Explanation - Pot is legal in . . . [my home state] now.” (TR at page 30 line 12 to page 32 line 17, and GX 1 at page 33.) It was during a subsequent, July 2019, subject interview that Applicant was told he “was dead wrong” about his assumption as to the use of marijuana. (TR at page 18 line 22 to page 19 line 16, and 39 lines 5~16.) He then immediately ceased his use of marijuana. Applicant’s last use of marijuana was more than two years ago. Applicant also purchased marijuana four times from legal dispensaries during the 2018~2019 time frame: three times for his personal use, and once for his elderly father to treat his father’s chronic pain. (TR at page 18 lines 2~18, at page 29 line 23 to page 30 line 8, and at page 39 lines 1~5.)

Applicant submitted the results of recent drug tests (AppXs A and J), and submitted a Statement of intent against future illegal drug usage (AppX B). He received a favourable evaluation from a licensed clinical social worker. (AppXs H and I.) Applicant also submitted letters of support from those who know him in his profession and in his community. (AppXs G, K and N.)

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, 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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.

Section 7 of Executive Order 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 seven conditions that could raise a security concern and may be disqualifying. Three conditions are established:

- (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.

Appellant smoked and purchased marijuana. He had a security clearance for his job during that time. Therefore, concerns under AG ¶ 25 (a), (c), and (f) are established.

The guideline at AG ¶ 26 contains four conditions that could mitigate security concerns. Two conditions may be 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.

Applicant's involvement with marijuana ended more than two years ago. His usage was based on a false assumption that if it was legal in his state, he could use it. Once informed of the error of his assumption, he immediately ceased using and purchasing marijuana. Furthermore, he has submitted a signed statement of intent eschewing any future involvement with illegal substances. Drug Involvement is no longer of security concern; and as such, 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 an applicant's conduct and all the 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.

AG ¶ 2(b) requires each case must be judged on its own merits. 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. Applicant is well respected in his work and in his community. (AppXs D, E, G, K and N.)

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his 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 for a security clearance. Eligibility for access to classified information is granted.

Richard A. Cefola
Administrative Judge