



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



In the matter of:)	
)	
)	ISCR Case No. 12-05861
)	
Applicant for Security Clearance)	

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

05/12/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline H, drug involvement, but failed to mitigate the personal conduct security concerns under Guideline E. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On May 29, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H, drug involvement and Guideline E, personal conduct. 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 (AG) effective within the DOD on September 1, 2006.

On June 17, 2014, Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on March 30, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 3, 2015. I

convened the hearing as scheduled on April 28, 2015. The Government offered exhibits (GE) 1 through 3, which were admitted into evidence without objection. Applicant and three witnesses testified on his behalf. He offered Applicant Exhibits (AE) A and B, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on May 6, 2015.

Findings of Fact

Applicant admitted all of the allegations in the SOR. I have incorporated his admissions into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 27 years old. He graduated from college in 2011. He is not married and has no children. He has not served in the military. He has been employed by a federal contractor since October 2011 and has held a secret security clearance since his employment.¹

Applicant admitted he used marijuana while in college from approximately 2007 to 2010. He has not used it since 2010. He infrequently purchased marijuana during this time. He was aware that the use and purchase of marijuana was illegal. He no longer associates with those he used marijuana with and refers to his drug use as a period of youthful indiscretion. He does not intend to use illegal drugs in the future.²

In September 2011, Applicant completed a security clearance application (SCA). In response to question 23, which asked if in the last seven years he had used any illegal drugs or controlled substances, he answered "no." He deliberately failed to disclose his illegal drug use. He certified and swore that his answers were true, complete, and correct.³

At his hearing, Applicant explained his mother was watching him complete his September 2011 SCA. He was embarrassed about his actions and did not want his mother to know about his drug use or discuss it with her. He stated he did not think disclosing his drug use would help him get a security clearance or a job, so he did not provide the truthful information. He stated he was conflicted when he lied about his past drug use. He attributed his conduct to a combination of youthful indiscretion, stupidity, and desperation. He stated he displayed a lack of judgment, reliability and maturity.⁴

In December 2011, after being hired by his employer, Applicant was required to complete another SCA. In response to question 23, which asked if in the last seven

¹ Tr. 19-21.

² Tr. 22-23, 28-30, 48.

³ Tr. 33-34; GE 1.

⁴ Tr. 21-22, 30-31, 34-35, 45-46.

years he had used any illegal drugs or controlled substances, he answered “no.” He deliberately failed to disclose his illegal drug use. He certified and swore that his answers were true, complete, and correct. At his hearing, Applicant stated that when he got to the section that asked him about his prior drug use he did not know how to fix the situation because he was stuck with his lie. He considered discussing the issue with a human resource specialist or the facility security officer, but did not.⁵

During an interview with a government investigator on January 26, 2012, Applicant denied using illegal drugs and did not voluntarily disclose his past drug use and purchase.⁶

On April 18, 2012, Applicant was again interviewed by a government investigator. He did not voluntarily disclose his past drug use and purchase until after he was told that during the course of his background investigation disclosures were made to the investigator that he had used illegal drugs. He responded that he had in fact used marijuana despite his original responses on the two SCAs and his negative responses during his initial interview. He explained that he failed to disclose his prior use and purchase of marijuana because he was fearful that it would negatively affect the adjudication of his security clearance. At his hearing, when asked if he was ever going to tell the government about his past drug use he stated: “No, probably not.” He admitted that “he folded under pressure” by not disclosing his past. He stated he did not think he was given adequate advice when completing his SCA and when interviewed. He stated he was confused when completing the SCA because he thought providing his drug history would prevent him from getting a job, which is why he was not truthful. He stated since his April 2012 interview he has been truthful.⁷ In a letter provided by Applicant at his hearing regarding his failure to disclose his past drug use he stated:

My actions were both primarily influenced by and reasonably backed due to desperation and anxiety. I had no ill intent in any of my omissions, but when I was interacting with investigators I was scared and nervous. I was anxious and completely froze up. I was desperate to get my professional life underway after a long period of unemployment.⁸

Applicant further stated in his letter that he did not receive any advice from his hiring manager, facility security officer or human resource department on the clearance process. He feared if he provided his drug history he would not get hired. He had no knowledge of the security process and was afraid he would lose his first job opportunity if he disclosed his past drug use.⁹

⁵ Tr. 36-39; GE 2.

⁶ Tr. 39-40; GE 3.

⁷ Tr. 41; GE 3.

⁸ AE A.

⁹ AE A

Applicant's coworker testified on his behalf and provided a character letter. He has known Applicant for about three and a half years. They share an office. He believes Applicant is honest and made a mistake that he learned from. He was only aware Applicant was untruthful on one SCA. He was unaware Applicant was untruthful on a second SCA and when he was interviewed by the government investigator. In his letter, he refers to Applicant making a "split-second" decision due to a simple desire to please.¹⁰

A second witness testified and provided a written statement on Applicant's behalf. He has held a security clearance for 15 years. He was aware Applicant failed to disclose his prior drug use. Applicant told him the reason he did not disclose his drug use was because he was young and scared. He believes Applicant is one of the best people in the office for following rules and that Applicant takes his responsibilities seriously. He is a valued employee.¹¹

Applicant's supervisor testified on his behalf and provided a character letter. He hired Applicant in 2011. Applicant is productive and a team player. He works well independently and is health conscious. About six months ago, Applicant disclosed to the witness that he omitted information on his SCA and did not know what he should do about it. He was advised to be honest. The witness considers Applicant to be a responsible person. The witness was not aware that Applicant was untruthful twice on his SCA or during his interview and only honest after being confronted with the facts. He stated Applicant is a dedicated trustworthy individual who is a valuable contributor to the staff.¹²

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. Instead, 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. 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,

¹⁰ AE B.

¹¹ AE B.

¹² AE B.

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 access to classified information 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. Likewise, I have not drawn 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 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 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.

Section 7 of Executive Order 10865 provides that 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

AG ¶ 24 expresses the security concern for drug involvement:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual’s reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person’s ability or willingness to comply with laws, rules, and regulations.

I have considered the following disqualifying conditions for drug involvement under AG ¶ 25 and the following are potentially applicable:

- (a) any drug abuse; and

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

Applicant used marijuana from 2007 to at least January 2010 with varying frequency while attending college. During this same period he purchased marijuana on several occasions. I find the above disqualifying conditions apply.

I have considered the mitigating conditions 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) a demonstrated intent not to abuse any drugs in the future, such as: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; (4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant has not used marijuana since he attended college in 2010. It has been five years since his last use. He no longer associates with his college friends with whom he used marijuana. It appears his use was the result of youthful indiscretion. There has been an appropriate period of abstinence. He now works in a professional setting and further exposure to illegal drugs is unlikely. His past drug use does not cast doubt on his current reliability, trustworthiness or good judgment. AG ¶¶ 26(a) and 26(b) apply.

Guideline E, Personal Conduct

AG ¶ 15 sets out the security concern relating to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

I have considered the disqualifying conditions under personal conduct AG ¶ 16 and the following two are potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment

qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government investigator.

Applicant deliberately and intentionally failed to disclosure his prior marijuana use and purchase on two SCAs and when interviewed by a government investigator. I find the above disqualifying conditions apply.

I have also considered all of the mitigating conditions for personal conduct under AG ¶ 17 and the following are potentially applicable:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused by or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant did not make a prompt, good-faith effort to correct his concealment and falsification. On three separate occasions he deliberately failed to disclose his past drug history. His first failure was on a September 2011 SCA. He had two months to reflect on his omission when he was required to complete a second SCA in December 2011. Again he chose to lie about his past rather than provide the information because he was afraid it would hurt his employment. He was then interviewed by a government investigator in January 2012 and had an opportunity to tell the truth, but chose not to. After completing a background investigation the government learned of Applicant's past use and purchase of marijuana. The investigator interviewed Applicant a second time

and confronted him with the information. At that point, Applicant admitted his past illegal conduct. AG ¶ 17(a) does not apply.

Applicant testified that he was not given proper guidance regarding the security process and completion of a SCA, and he feared he would not be hired if he was truthful. Applicant swore under penalty of law his answers were truthful. He did not seek assistance when completing the SCA. He was only required to answer the questions truthfully, which requires no additional advice or guidance. He was asked questions by a government investigator. It is assumed he minimally knew of his obligation to be truthful. His conduct and omissions are not minor or infrequent. They did not happen under unique circumstances. He lied on three separate occasions during the security process. His actions cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 17(b) and 17(c) do not apply. The remaining mitigating conditions are not pertinent to the facts of this case.

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(a):

- (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 E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a 27-year-old educated young man. He used and purchased marijuana while attending college. His drug involvement appears to be in his past and is mitigated. The fact he chose to repeatedly lie about it is not mitigated. The government relies on those holding security clearances to be truthful at all times regardless of the consequences due to the extreme importance of protecting national security. Applicant was concerned his mother would learn of his drug past and that he would not be hired if

he disclosed it. His actions cause one to question whether he would rise to the occasion and admit facts that might potentially be detrimental to his professional career. He had three separate opportunities to tell the truth to the government and he chose not to. He admitted he probably never would have told the government if it had not learned of his drug use through a background investigation. Applicant's personal conduct is a security concern.

Overall the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns under Guideline H, drug involvement, but failed to mitigate the security concerns arising under Guideline E, personal conduct.

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:	FOR APPLICANT
Subparagraphs 1.a-1.b:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.c:	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.

Carol G. Ricciardello
Administrative Judge