



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



In the matter of:)	
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[NAME REDACTED])	ISCR Case No. 12-07777
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

04/18/2014

Decision

MALONE, Matthew E., Administrative Judge:

Applicant has used marijuana for 43 years, most recently in August 2013. He also intends to continue using marijuana. His request for a security clearance is denied.

Statement of the Case

On March 23, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (eQIP) to obtain a security clearance required for his job with a defense contractor. After reviewing the results of the ensuing background investigation, which included his responses to interrogatories from Department of Defense (DOD) adjudicators,¹ it could not be determined that it is clearly consistent with the national interest for Applicant to have access to classified information.²

¹ See DOD Directive 5220.6 (Directive), as amended, Section E3.1.2.2.

² Required by Executive Order 10865, as amended. See *also* Directive, Section E3.1.1.

On November 20, 2013, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed at Guideline H (Drug Involvement).³ Applicant timely responded to the SOR and requested a decision without a hearing. On January 20, 2014, Department Counsel issued a File of Relevant Material (FORM)⁴ in support of the SOR. Applicant received the FORM on January 28, 2014, and was notified that he had 30 days to file a response to the FORM. The record closed after Applicant failed to submit any additional information within the time allowed. The case was assigned to me on April 9, 2014.

Findings of Fact

The Government alleged that Applicant used marijuana with varying frequency between December 1970 and August 2013 (SOR 1.a); that he may use marijuana in the future because he enjoys it (SOR 1.b); and that in 2006 he bought marijuana and gave his girlfriend money with which to purchase marijuana (SOR 1.c). Applicant admitted SOR 1.a, and denied with explanation SOR 1.b and 1.c. (FORM, Items 1 and 2) In addition to the facts established by Applicant's admission, I make the following findings of fact.

Applicant is 62 years old and has been employed by the same defense contractor since January 1980. However, this appears to be his first request for a security clearance. (FORM, Item 3)

In his eQIP, Applicant disclosed that he has used marijuana two to three times monthly since 1970. He also stated his intent to continue using marijuana because he enjoys its effects. His last use of marijuana at the time was in the same month he submitted his eQIP. (FORM, Item 3)

On May 15, 2012, Applicant was interviewed by a Government investigator as part of his background investigation. He had smoked marijuana earlier that month. During the interview, Applicant disclosed that he was still using marijuana, although less frequently than as he stated in his eQIP. He also stated he normally smokes marijuana alone when he is at home, and that he enjoys the calming effect marijuana has on him. (FORM, Item 4)

During the interview, Applicant also disclosed that, in 2006, he provided a former girlfriend money with which to buy marijuana. Applicant's girlfriend, who died in 2010, was a heroin addict who was going through detoxification in 2006 and was waiting for admission to a methadone treatment program. The marijuana was intended to ease the effects of heroin withdrawal until she could start methadone treatment. Applicant, who had reduced his use of marijuana because he had developed asthma, resumed smoking marijuana two to three times a month with his girlfriend while she was in the methadone program. However, in response to the SOR, Applicant claimed that his

³ See Directive, Enclosure 2. See also 32 C.F.R. § 154, Appendix H (2006).

⁴ See Directive, Enclosure 3, Section E3.1.7. The FORM included four documents (Items 1 - 4) proffered in support of the Government's case.

marijuana use with his girlfriend was the first time in more than 20 years he had smoked marijuana. He also averred that once she started the methadone program, and for the next four years, he did not smoke marijuana. But when she died in 2010, Applicant found the rest of her marijuana among her effects, and he has been using that marijuana sporadically ever since. (FORM, Items 2 and 4)

On October 8, 2013, Applicant responded to interrogatories about his drug use from DOD adjudicators. He confirmed that his last drug use was in August 2013, and that he may continue to use marijuana infrequently. As of then, he still possessed his girlfriend's marijuana. However, when he responded to the SOR, he disavowed any future intent to use drugs. (FORM, Items 2 and 4)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁵ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the "whole-person" concept, those factors are:

(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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁶ for an applicant to either receive or continue to have access to classified information. Department Counsel must produce sufficient reliable information on which DOHA based its preliminary decision to deny or revoke a security clearance for an applicant. Additionally, Department Counsel must prove

⁵ Directive. 6.3.

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

controverted facts alleged in the SOR.⁷ If the Department Counsel meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁸

Because no one is entitled to a security clearance, an applicant bears a heavy burden of persuasion to establish that it is clearly consistent with the national interest for the applicant to have access to protected information.⁹ A person who has access to such information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, there is a compelling need to ensure each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the nation's interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of the Government.¹⁰

Analysis

Drug Involvement

Applicant is 61 years old, and he has used marijuana, at times as often as two or three times each month, since he was a teenager. In his eQIP, during his interview by a Government investigator, and in his interrogatory responses, he expressed his intent to continue using marijuana. This information raises a security concern articulated at AG ¶ 24, as follows:

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.

(a) Drugs are defined as mood and behavior altering substances, and include:

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and (2) inhalants and other similar substances;

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

⁷ Directive, E3.1.14.

⁸ Directive, E3.1.15.

⁹ See *Egan*, 484 U.S. at 528, 531.

¹⁰ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

More specifically, available information requires application of the disqualifying conditions at AG ¶¶ 25(a) (*any drug abuse (see above definition)*); and 25(h) (*expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use*).

I have also considered the following AG ¶ 26 mitigating conditions:

(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) a demonstrated intent not to abuse any drugs in the future, such as: (1) dissociation 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;

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and

(d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

AG ¶¶ 26(c) and (d) do not pertain to the facts and circumstances of this case. As to AG ¶¶ 26(a) and (b), the record does not support their application. Applicant's marijuana use has been of long duration, and his drug use within the last 12 months precludes a finding there has been "an appropriate period of abstinence." Applicant's statement, in response to the SOR, that he will now abstain from future drug use has no persuasive value. He has failed to mitigate the security concerns about his involvement with illegal drugs.

Whole-Person Concept

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guideline H. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). All available information suggests Applicant's involvement with illegal drugs will continue. His entire adult life has included illegal conduct in the form of marijuana use. He has done nothing to resolve the resulting doubts about his suitability for access to classified information. Because protection of the national interest is the central purpose of these adjudications, those doubts must be resolved for the Government.

Formal Findings

Formal findings 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.c: Against Applicant

Conclusion

In light of all available information, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge