



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 13-01317 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Stephanie C. Hess, Esquire, Department Counsel
For Applicant: *Pro se*

06/20/2014

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on August 14, 2013. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on February 4, 2014, 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 For Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR in February 2014. He submitted a notarized, written response to the SOR allegations dated February 14, 2014, and he requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on March 31, 2014. Applicant received the FORM on April 18, 2014. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not submit a response. DOHA assigned this case to me on June 9, 2014, and I received it on June 17, 2014. The Government submitted four exhibits, which have been marked as Items 1-4 and admitted into the record. Applicant's response to the SOR has been marked and admitted as Item 3. The SOR has been marked as Item 1.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a-1.c of the SOR with explanations.¹ His admissions are incorporated herein as findings of fact. He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 28 years old, works as an analyst for a Department of Defense contractor. He began his current employment in February 2013. He worked in private industry as an analyst from August 2011 until January 2013, as a public school teacher for two years, and as a research analyst in college. Applicant received a bachelor's degree in 2009 and a master's degree in 2011. Applicant is single.²

Applicant completed his e-QIP on August 14, 2013. Applicant provided information about his education, work history, travel history, family, personal contacts, military status, foreign activities and contacts, police record, alcohol consumption, drug use, association membership, and financial information. All information he provided was not a security concern, except his drug use.³

On his e-QIP, Applicant admitted to using marijuana with friends five to seven times between March 2008 and July 2012, to trying cocaine with friends three or four times between July 2010 and August 2012, and to recreational use of MDMA (ecstasy) four or five times at concerts between May 2011 and December 2012. He also stated that he had no desire to use these drugs in the future, that he is over "the party scene", and that he has "gotten all of those actions out of his system."⁴

¹Item 3.

²Item 4.

³Item 4.

⁴Item 4.

On his e-QIP, Applicant denied receiving treatment for drug use; undergoing counseling; or any misuse of prescription drugs. He also denied using any drugs or controlled substance while holding a security clearance. He indicated that the government has not previously investigated his eligibility for a security clearance, granted him a security clearance, denied him a security clearance, or debarred him from government employment.⁵

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, 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.

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. . . ." An applicant has the ultimate burden of persuasion for obtaining 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 an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally

⁵Item 4.

permissible extrapolation as to 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 pertaining to 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.

(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.

AG ¶ 25 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

(a) any drug abuse (see above definition);

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

(g) any illegal drug use after being granted a security clearance.

Applicant admitted to sporadic use of marijuana, cocaine, and MDMA between March 2008 and December 2012. To use these drugs, he needed to possess the drugs and possibly he also possessed drug paraphernalia associated with marijuana and cocaine use. A security concern is established under AG ¶¶ 25(a) and 25(c).

Applicant admitted to last using any drugs in December 2012, two months before he began his current employment in February 2013 and nine months before he applied for a security clearance. Since he has not previously held a security clearance and the record lacks any evidence that he did, a security concern is not established under AG ¶ 25(g).

The drug involvement guideline also includes examples of conditions that can mitigate security concerns. I have considered the following mitigating factors AG ¶ 26(a) through ¶ 26(d):

- (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) disassociation from drug-using associates and contacts;
 - (2) changing or avoiding the environment where drugs were used;
 - (3) an appropriate period of abstinence; and,
 - (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.

Applicant denies any abuse of prescription drugs and treatment or counseling for drug abuse, and the record lacks any evidence of such treatment. AG ¶¶ 26(c) and 26(d) are not applicable.

Applicant indicated that he stopped his use of any illegal drugs after December 2012. He also stated on his e-QIP that he had no intent to use drugs in the future. However, his current association with drug users and his location of use is either unknown or unclear. Although he stated that he did not intend to use drugs in the future, his statement on his e-QIP lacks an acknowledgment that his clearance will automatically be revoked if he does. It has been approximately 18 months since his last drug use. Given the variety of his drug use, it is insufficient time to conclude that he will not use drugs in the future. AG ¶¶ 26(a) and 26(b) are partially applicable.

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 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's drug use first began while he was still in college. He described his use as experimental and infrequent. He used several different drugs for almost four years. He chose not to appear at a hearing, leaving a void in the record because his credibility about his future drug use cannot be assessed. At this time, the record lacks sufficient evidence to assess his past and future drug use and his judgment.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance at this time. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his drug involvement under Guideline H.

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

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| Subparagraph 1.a: | Against Applicant |
| Subparagraph 1.b: | Against Applicant |
| Subparagraph 1.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 eligibility for a security clearance. Eligibility for access to classified information is denied.

MARY E. HENRY
Administrative Judge