



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



In the matter of:)
)
) ISCR Case No. 14-00143
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

August 13, 2014

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant mitigated the Drug Involvement security concerns that arose out of his infrequent recreational drug use from 2001 to 2011. Eligibility for access to classified information is granted.

Statement of the Case

On August 30, 2013, Applicant submitted an Electronic Questionnaires for Investigative Processing (e-QIP). On March 11, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H, Drug Involvement. 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 after September 1, 2006.

Applicant responded to the SOR (Answer) on May 5, 2014 and requested a hearing before an administrative judge. The case was assigned to me on June 27, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 30, 2014, and the hearing was convened as scheduled on July 29, 2014. The Government offered Hearing Exhibit (HE) I and Exhibits (GE) 1 and 2, which were admitted without objection. Applicant offered Exhibits (AE) A through C, which were admitted without objection. Applicant testified on his own behalf and called two witnesses. DOHA received the hearing transcript (Tr.) on August 7, 2014.

Findings of Fact

Applicant is a 33-year-old employee of a government contractor. He has worked for the government contractor for less than a year. Prior to his job with the government contractor, Applicant was a graduate student and worked as a research assistant in his chosen career field. This is the first time he has applied for a security clearance. He graduated with a doctoral degree in June 2014. He is single and has no children. (GE 1; GE 2; Tr. 35-38, 48, 58.)

The SOR alleged that between 2001 and 2011, Applicant infrequently used drugs to include: marijuana about three times a year in 2001-2002, and once a year in 2005, 2006, and 2010; the prescription drug Adderall (without a prescription) nine times between 2003 and 2009; a hallucinogenic drink named Ayahuasca while in a foreign country one time in 2008; and hallucinogenic mushrooms three-to-four times between 2002 to 2003 and once in 2011. In his e-QIP, Answer, and during his testimony, Applicant admitted all of the allegations contained in the SOR pertaining to his drug use. (GE 1; GE 2; Tr. 35-62; Answer.)

Applicant's drug use was largely recreational in nature and occurred infrequently during his extended undergraduate and graduate education. He found himself giving in to peer pressure from former friends who encouraged him to use illegal substances. He also acknowledged using the prescription drug Adderall, without a prescription, in order to help him study long hours during his schooling. (GE 1; GE 2; Tr. 30-35, 38-48, 51-55, 62.)

He recognizes the poor judgment of his past illegal drug use. In fact, immediately after ingesting the mushrooms in 2011, he realized the error of his ways and confessed his drug use to his brother who chastised him on his behavior. Applicant vowed to never use illegal substances or misuse prescription drugs again, at that time. He recognized that he made a serious mistake and should not use drugs again. He has been successful in maintaining that promise for nearly three years. He has been extremely forthright in offering details about his drug use on his e-QIP, in his personal subject interview, in his Answer, and in his testimony. He has matured since his last drug use in 2011. He is no longer a student, but prides himself on being a professional. He no longer associates with any drug-using friends. He signed a statement of intent in which he pledged "never to use any illegal drug or misuse any legal drug at any point in the future." (GE 2; Tr. 30-34, 59, 61-62, 64.)

Applicant is well respected by those who know him, as verified by his manager and a friend of 13 years, both of whom testified on Applicant's behalf. Applicant is known by his manager to be extremely conscientious, reliable and trustworthy. He rates him highly among all employees. His manager also testified that all employees are required to take a urinalysis when hired. He stated that Applicant would not have been hired had he failed the urinalysis. Applicant has been "truthful" with his employer about his past drug use. He has conducted himself with "consummate professionalism" and has a high degree of integrity. Additionally, letters of support from friends and relatives demonstrate that Applicant no longer has room for illegal substances in his life and has matured into a serious professional man. (AE C; Tr. 65-84.)

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 to be 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, 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(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, 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." The applicant has the ultimate burden of persuasion to obtain 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 EO 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

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.

I have considered all of the disqualifying conditions under Drug Involvement 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.

The Government presented sufficient information to support all of the factual allegations under Guideline H (SOR ¶¶ 1.a through 1.d). Applicant possessed and used marijuana, Ayahuasca, and hallucinogenic mushrooms infrequently over a ten-year period. He also occasionally misused the prescription drug Adderall. The facts established through the Government’s evidence and through Applicant’s admissions raise security concerns under both of the above disqualifying conditions.

I have considered the mitigating conditions under Drug Involvement AG ¶ 26, and 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's illegal drug use and misuse of a prescription drug occurred while Applicant was a student. It happened infrequently, in situations of peer pressure. In 2011, after Applicant's last drug use, he recognized that he needed to stop using illegal substances. He has matured into a successful, ethical, and hard-working professional in the past few years. Future drug use is unlikely. His past drug-use casts no doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 26(a) is mitigating.

Applicant has demonstrated sufficient intent not to use any illegal drugs or misuse prescription drugs in the future. He has disassociated from drug-using friends. He is no longer a student, and surrounds himself with like-minded professional acquaintances that do not use illegal substances. Thus, he has changed his environment. He has abstained from the use of illegal substances for almost three years. He signed a statement of intent with automatic revocation of clearance for any violation. Applicant's current reputation for honesty and ethical behavior, coupled with his candor concerning his past drug use, add weight to his commitment to abstain from illegal drug use. Applicant has presented sufficient evidence to mitigate the Government's concerns under AG ¶ 26(b).

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 pertinent facts and circumstances surrounding this case. While Applicant's illegal drug use occurred over a ten-year span, it was infrequent and largely situational due to the pressures of peers and the rigorous academic challenges he faced. He was immature at the time and did not recognize the seriousness of his actions. He has now matured. He has not used illegal substances for nearly three years after coming to the revelation that

there was no room for illegal substances in his future professional life. His changes are permanent and the likelihood of recurrence is extremely low. Applicant is highly respected by those who know him. He has a reputation for honesty and trustworthiness. He successfully passed his employer's required urinalysis test. 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 should be granted a security clearance.

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 1d: 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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Jennifer I. Goldstein
Administrative Judge