



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



In the matter of:

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) ISCR Case No. 14-02713
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Applicant for Security Clearance

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel

For Applicant: *Pro se*

April 6, 2015

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on December 2, 2013. On August 28, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline H for Applicant. 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 Department of Defense after September 1, 2006.

Applicant acknowledged receipt of the SOR on October 2, 2014. He answered the SOR in writing on October 30, 2014, and requested a hearing before an Administrative Judge. The Defense Office of Hearings and Appeals (DOHA) received the request soon thereafter, and I received the case assignment on January 21, 2015. DOHA issued a notice of hearing that same date, January 21, 2015, and I convened the hearing as scheduled on February 18, 2015. The Government offered Exhibits (GXs) 1 and 2, which were received without objection. Applicant testified on his own behalf and

submitted Exhibits (AppXs) A through G, which were received without objection. DOHA received the transcript of the hearing (TR) on February 26, 2015. I granted Applicant's request to keep the record open until March 18, 2015, to submit additional matters. On March 18, 2015, he submitted Exhibit H, which was received without objection. The record closed on March 23, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

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

Guideline H - Drug Involvement

Applicant is 31 years of age, and has "a Bachelor's of Science Degree in Business Administration." (TR at page 26 lines 9~24.) He has held a security clearance since December of 2008. (TR at page 27 lines 20~25, *see also* GX 2.)

1.a. and 1.d. Applicant used marijuana about 12 times from about 2005 until his last usage in May of 2013. (TR at page 28 line 24 to page 30 line 6, and GX 1 at page 33.) He began using marijuana while in college, and used it two times after being granted a security clearance. (*Id.*, and TR at page 32 line 20 to page 38 line 8.)

1.b. and 1.d. Applicant used Adderall, without having a prescription for this prescription drug, twice in 2008 before being granted a security clearance, and once in 2010 after being granted a security clearance. (TR at page 30 line 7 to page 31 line 5, at page 32 line 20 to page 38 line 8, and GX 1 at pages 33~34.)

1.c. and 1.d. Applicant used cocaine once in December of 2012 after being granted a security clearance. (TR at page 31 line 6 to page 32 line 19, and GX 1 at page 34.)

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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG Paragraph 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. Paragraph 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 avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive Paragraph E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive Paragraph E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to 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 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 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

The security concern relating to the guideline for Drug Involvement is set out in Paragraph 24:

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.

The guideline also notes several conditions that could raise security concerns. Under Subparagraph 25(a), “*any drug abuse*” may be disqualifying. Applicant used marijuana 12 times, Adderall three times without a prescription, and cocaine once. In addition, “*any illegal drug use after being granted a security clearance*” under Subparagraph 25(g) may be disqualifying. Here, Applicant used marijuana twice, Adderall once, and cocaine once after having been granted a security clearance in 2008.

I find no countervailing mitigating condition that is applicable here. Applicant used an illegal substance on four occasions after having been granted a security clearance, the last time in May of 2013, less than two years prior to his hearing.

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 the circumstances. Under AG Subparagraph 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 Administrative Judge should also consider the nine adjudicative process factors listed at AG Subparagraph 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.

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Applicant has the unqualified support of those who know him in the workplace, and of his girl friend. (AppXs B~F, and H.) However, the record evidence leaves me with questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For this reason, I conclude Applicant has not mitigated the security concerns arising from his Drug Involvement.

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

Subparagraph 1.a.~1.d.: 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.

Richard A. Cefola
Administrative Judge