



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



In the matter of:)
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-----) ISCR Case No. 14-02753
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)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

November 13, 2015

Decision

MOGUL, Martin H., Administrative Judge:

On August 15, 2014, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines H and B for Applicant. (Item 1.) 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 for SORs issued after September 1, 2006.

Applicant replied to the SOR (RSOR) in writing on September 23, 2014, and he requested that his case be decided on the written record in lieu of a hearing. (Item 2.) On March 30, 2015, Department Counsel issued the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant. In the FORM, Department Counsel offered 11 documentary exhibits. (Items 1-11.) In the FORM, Department Counsel furnished information regarding Egypt, which I will address below.

Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on July 26, 2015. Applicant submitted no additional evidence. The case was assigned to this Administrative Judge on September 1, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his RSOR, Applicant admitted all of the SOR allegations, 1.a. through and 1.d., and 2.a. and 2.b. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the FORM, and the admitted documents, and upon due consideration of that evidence, I make the following additional findings of fact:

Applicant is 28 years old. He has never been married, and he has no children. Applicant received a Bachelor's degree in 2011. Applicant has been employed as a Junior Financial Analyst by his current employer, a defense contractor, since June 2013, and he seeks a DoD security clearance in connection with employment in the defense sector. (Item 3.)

Guideline H - Drug Involvement

The SOR lists four allegations (1.a. through 1.d.) under Adjudicative Guideline H, Drug Involvement, which will be reviewed in the same order as they were listed on the SOR.

1.a. The SOR alleges, and Applicant has admitted in his RSOR, that, "In October 2013, [Applicant was] arrested for and charged with Distribution of a Controlled Substance, a felony."

1.b. The SOR alleges, and Applicant has admitted in his RSOR, that, "After having been granted a DoD Secret clearance in August 2013, [Applicant] used an illegal controlled substance, Molly or MDMA, in October 2013."

1.c. The SOR alleges, and Applicant has admitted in his RSOR, that, "In October 2013, [Applicant] distributed Molly, an MDMA analogue, to another individual." (Items 1, 2.)

On November 19, 2013, Applicant was interviewed by an authorized Government investigator. During Applicant's Personal Subject Interview (PSI), he admitted he was given two pills of an illegal controlled substance, Molly or MDMA by a friend.¹ He took one pill and gave the other one to an undercover police officer. (Item 6.) This resulted in

¹Applicant was given the opportunity to comment in a post FORM response to the accuracy of the PSI or to object to it, but no response was given. Applicant has therefore waived any objection to the PSI.

his arrest. Although the case was dismissed, Applicant admitted the criminal conduct did occur.

1.d. The SOR alleges, and Applicant has admitted in his RSOR, that, "From September 2007 to at least May 2009, [Applicant] used marijuana on multiple occasions."

In his PSI Applicant admitted that he used marijuana approximately three to five times a week during the period stated in the SOR, which would mean Applicant used marijuana from 270 to 450 times during this period. Applicant also purchased marijuana during this period. (Item 6.)

Guideline B, Foreign Influence

The SOR lists two allegations, (2.a. and 2.b.) regarding Foreign Influence, under Adjudicative Guideline B, which will be reviewed in the same order as they were listed on the SOR.

2.a. The SOR alleges, and Applicant admitted in his RSOR, that Applicant's grandparents are citizens and residents of Egypt.

In his PSI Applicant informed the investigator that his grandfather and grandmother are retired, and he has contact with them two times a year by telephone.

2.b. The SOR alleges, and Applicant admitted in his RSOR, that Applicant has two aunts, an uncle and several cousins who are citizens and residents of Egypt.

Applicant also indicated in his PSI that he has contact with one aunt once a year in person, the second aunt once a year or every other year by phone, an uncle once a year by phone, and several cousins once or twice a year by phone. Finally, Applicant wrote that he traveled to Egypt in August 2006 and December 2009 to visit his family. (Item 6.)

Current Status of Egypt

I take administrative notice of the following facts regarding Egypt. On July 3, 2013, the Egyptian military ousted former president Mohamed Morsi from power. From mid-August 2013, the army-backed government that had ruled Egypt since the July 2013 ouster began a violent police crackdown against Morsi's mostly Islamist supporters and arrested many leaders and Muslim Brotherhood members. Islamist radical groups in the Sinai Peninsula waged an insurgency against security services.

Terrorists and extremists have used explosive devices and drive-by shootings to target police, security officials and government institutions, which have resulted in deaths, casualties and damage to infrastructure. Responsibility for these attacks has been attributed primarily to jihadist elements operating out of the Sinai Peninsula, which remains a particularly restive region.

The most significant human rights problems have been: the removal of an elected civilian government; excessive use of force by security forces, including unlawful killings and torture; the suppression of civil liberties, including societal and government restriction on freedom of expression and press and freedom of assembly; and military trials of civilians.

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 ¶ 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. Likewise, I have avoided drawing 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, 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 AG ¶ 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 judgement and because it raises questions about a person’s ability or willingness to comply with laws, rules and regulations.

With respect to Guideline H, the Government has established its case. Applicant’s improper and illegal drug abuse, specifically the use of marijuana from 2007 to at least 2009 in great quantity, and the use of Molly or MDMA as recently as October 2013, after he was granted a security clearance in August 2013, is of great concern, especially in light of his continued desire to have access to the nation’s secrets. Applicant’s overall conduct pertaining to his illegal substance abuse clearly falls within Drug Involvement ¶ 25(a) “any drug abuse,” (c) “illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution,” and (g) “any illegal drug use after being granted a security clearance.”

Applicant failed to give any indication in his response to the SOR that he intends to abstain from drug usage in the future. Therefore, I cannot conclude that any mitigating condition is applicable under ¶ 26.

In this case, the Government has met its initial burden of proving that Applicant has used and purchased illegal drugs, including using an illegal substance after being granted a security clearance under Guideline H. Applicant, on the other hand, has failed to introduce any persuasive evidence in rebuttal, explanation, or mitigation, which could overcome the Government’s case against him. Accordingly, Guideline H of the SOR is concluded against Applicant.

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding Foreign Influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this

Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. The applicable condition in this case is: AG ¶ 7(a) “contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion.” While this could be argued to apply because Applicant’s grandparents, aunts, uncle and cousins are citizens and residents of Egypt, Applicant’s lack of contact and attachment with his relatives makes his relationship with them casual and infrequent.

AG ¶ 8 provides conditions that could mitigate security concerns. As reviewed above, because of Applicant’s casual and infrequent relationship with his relatives in Egypt, I find that AG ¶ 8(c) is applicable to this Applicant. Therefore, Guideline B of the SOR is concluded for Applicant.

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. 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. Based on all of the reasons cited above as to why the disqualifying conditions are applicable and controlling under Guideline H, I find that the record evidence leaves me with significant questions and doubts as to Applicant’s eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has not mitigated the security concerns under the whole-person concept.

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:	AGAINST APPLICANT
Subparagraph 1.a.-1.f:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a. and 2.b.:	For 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.

Martin H. Mogul
Administrative Judge