



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 14-00335
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel

For Applicant: *Pro se*

December 31, 2014

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigation Processing (e-QIP) on September 6, 2013. (Government Exhibit 1.) On April 18, 2014, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guideline H (Drug Involvement) concerning Applicant. 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 within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on May 6, 2014 (Answer), and requested a hearing by an administrative judge from the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on June 23, 2014. This case was assigned to me on June 27, 2014. DOHA issued a notice of hearing on July 25, 2014. I convened the hearing as scheduled on September 11, 2014. The Government offered Government Exhibits 1 and 2, which were admitted without objection. Applicant submitted Applicant Exhibits A through H, which were admitted without objection,

testified on his own behalf, and called four additional witnesses. DOHA received the transcript of the hearing (Tr.) on September 22, 2014. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 25, single, and has a bachelor of science degree. He has been employed by a defense contractor since August 2013 and seeks to obtain a security clearance in connection with his employment. (Government Exhibit 1 at Section 13A.) Applicant admitted all the allegations of the SOR, with explanations. Applicant's admissions are incorporated into the following findings of fact.

Paragraph 1 (Guideline H, Drug Involvement)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he used illegal drugs.

Applicant admits that he used a variety of drugs between 2005, when he was in high school, and his last use in August 2013. The drug he used most often was marijuana, which Applicant used during this entire period approximately 50 times. (Tr. 47-48; Applicant Exhibit A.)

In 2012 and 2013 Applicant expanded his drug use to other, harder, drugs. These included psychedelic mushrooms, LSD, cocaine, and ecstasy. Applicant explained that he used these drugs, "For the experiment of what it would feel like initially and then the music festivals they - - they facilitated that idea too." (Tr. 56, 59-60.) Other than cocaine, Applicant states that he used the harder drugs about three to five times. With regards to cocaine the figure was ten to twelve times. (Answer, Attachment 1 at 2; Government Exhibit 2.)

Applicant attended college from 2007 to 2013. Until 2009 his college expenses were paid by his parents. In about May of that year Applicant was informed by his parents that they would no longer pay his expenses.¹ Applicant then began selling marijuana to friends in his fraternity. He stated that:

[T]hese are good guys I can trust and it was \$5, \$10, \$10, up to \$45 and that was it. Anything more than that it was not happening and I just wasn't a part of it. And at that time I was looking for a quick solution to a problem I was put in and I didn't actually enjoy that and I didn't end up making as much money on it at all. I stopped a month after starting. (Tr. 53.) (See Government Exhibit 2.)

¹Applicant also testified that this event occurred in 2011, instead of 2009. (Tr. 69-71, 75-76.)

Applicant admitted that he failed a drug test when applying for a job with a different company. This occurred in about November 2012. (Tr. 60-63.)

Mitigation

Applicant submitted a signed statement, in which he stated he “would comply with laws, rules and regulations, specifically addressing the use of any illegal drugs such as marijuana, mushrooms, LSD, cocaine, ecstasy, with automatic revocation of clearance for any violation.” (Answer, Attachment 2.)

Applicant submitted several letters of recommendation from friends and co-workers. Applicant Exhibit C is from the Manager of the Program Quality Engineering Department at the contractor where Applicant worked as an intern for 18 months between November 2011 and April 2013. She states, “I was continuously impressed with [Applicant’s] unwavering professionalism in handling multiple projects of significant importance.” (See Applicant Exhibits D through H.)

Applicant’s current supervisor testified for him and provided a letter. (Tr. 82-95; Applicant Exhibit E.) Applicant stated that he had previously told his supervisor that he had “partied hard” in college. The supervisor did not have full knowledge of the extent of Applicant’s drug use until half an hour before he testified. (Tr. 68-69, 76-80.) He is the person who hired Applicant. With knowledge of Applicant’s drug use, this witness stated, “I feel [Applicant is] very trustworthy. He has high integrity. He is very dependable.”

A co-worker of Applicant also testified and supplied a statement. (Tr. 95-100; Applicant Exhibit G.) He strongly supports Applicant and recommends that he receive a security clearance.

Applicant’s aunt also testified for him. (Tr. 101-107.) She lives in the city where Applicant went to school, and where he currently works. She discussed his trustworthiness and sense of responsibility.

Finally, a friend and mentor of Applicant testified and provided a statement. (Tr. 18-37; Applicant Exhibit H.) This witness worked with Applicant during the time he was an intern from 2011 through 2013. He is a program manager for that company. They remain good friends. He is about 30 years older than Applicant, and is a retired captain in the US Navy, after serving for 29 years. Before retiring he held an important command position in the Navy. He has prior knowledge of Applicant’s drug use and testified that he felt it to be a matter of poor judgment and experience at that time. He believes Applicant has matured and is now able to make the right decisions with regard to drug use. In his letter the witness stated, “I’ve adjudicated the character of hundreds of young men and women in my career, and I continue to be tasked to do so today. [Applicant] can be trusted with proprietary and classified information, and with his technical skills, he is destined for future leadership positions that involve government contracts.”

Policies

Security clearance decisions are not made in a vacuum. 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 to be used as appropriate 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 AG ¶ 2(a) 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, "Any 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination 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

Paragraph 1 (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 judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. 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; Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

I have considered the disqualifying conditions under AG ¶ 25 and especially considered the following:

- (a) any drug abuse;
- (b) testing positive for illegal drug use; and
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant admits using marijuana from 2007 through August 2013. He sold marijuana for a month during his college years, and tested positive for marijuana when applying for a job. In addition, he used psychedelic mushrooms, LSD, ecstasy, and cocaine during the 2012-2013 period. Each of these disqualifying conditions have application in this case.

I have studied all of the mitigating conditions under AG ¶ 26 and especially considered the following:

- (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 offered insufficient evidence that would support mitigation under AG ¶¶ 26 (a), or (b). Applicant's drug use ended approximately a year ago. While Applicant stated that he did not intend to use any drugs in the future, and submitted a signed statement of intent, it is simply too soon to find that he has mitigated security concerns arising from his pattern and history of drug abuse. Paragraph 1 is found against 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 applicant's conduct and all the relevant circumstances. 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 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is an intelligent and engaging young man of great potential. However, the evidence, including his testimony and that of his witnesses, show him to be lacking in maturity at this time for the responsibility of a security clearance. His understanding of the seriousness of his drug use, and decision to sell drugs, was superficial at best. His decision not to tell one of his witnesses, a person who is his supervisor, the entire facts of the case until literally at the courtroom door is not the act of a mature person. Under AG ¶ 2(a)(3), Applicant's conduct is recent. Based on the state of the record, I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, at the present time, I find that there is the potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)), and that there is an unacceptable likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I

conclude Applicant has not yet mitigated the security concerns arising from his drug use.

On balance, it is concluded that Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding against Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 of the Government's Statement of Reasons.

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
Subparagraphs 1.a. through 1.g.:	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.

WILFORD H. ROSS
Administrative Judge