



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



In the matter of:)	
)	
)	ISCR Case No. 14-00367
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline E. Heintzelman, Esquire, Department Counsel
For Applicant: *Pro se*

10/17/2014

Decision

HENRY, Mary E., Administrative Judge:

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

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on September 9, 2013. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on March 18, 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 on March 26, 2014, and he answered it on May 9, 2014. Applicant requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on June 10, 2014, and I received the case assignment on July 31, 2014. DOHA issued a Notice of Hearing on September 8, 2014, and I convened the hearing as scheduled on October 1, 2014. The record closed on October 1, 2014. The Government offered one exhibit marked as GE 1, which was received and admitted into evidence without objection. Applicant and one witness testified. He submitted exhibits (AE) marked as AE A through AE G, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on October 16, 2014.

Procedural and Evidentiary Rulings

Notice

Applicant received the notice of the date, time and place of the hearing less than 15 days before the hearing. I advised Applicant of his right under ¶ E3.1.8. of the Directive to receive the notice at least 15 days before the hearing. Applicant affirmatively waived this right under the Directive. (Tr. 9)

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a - 1.c of the SOR. 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 25 years old, works part-time as a sales person for a DOD contractor. He began working full-time for his present employer in March 2013 as a quality assurance tester. In April 2014, his employer transferred him to the full-time position of facility security officer (FSO), a position he held until recently.¹ Shortly after Applicant became the FSO, the DOD conducted a vulnerability assessment of his employer's facility and rated it commendable on August 6, 2013. In October 2013, his employer received from DOD full accreditation for its information systems based on its master system security plan on which Applicant worked. Applicant completed the FSO program management for possessing facilities curriculum on December 27, 2013. The DOD conducted a second security vulnerability assessment of his employer's facility and rated it superior on July 25, 2014 while Applicant was the FSO.²

¹AE G reflects that Applicant, as the facility security officer, was assigned to a specific program on August 27, 2013 as part of his duties.

²GE 1; AE A - AE D; AE F; AE G; Tr. 17-18.

Applicant graduated from high school in 2007. He enlisted in the United States Army in August 2007 and received an honorable discharge from active duty on December 10, 2011 with the rank of sergeant and pay rate of E-5. While in the Army, Applicant served three and one-half months in Iraq in 2009 and one year in Afghanistan over three separate short deployments in 2008, 2010, and 2011. During his military service as an infantryman, he received the Afghanistan Campaign Medal with Campaign Star, three Army Commendation Medals, two Army Achievement Medals, the Army Good Conduct Medal, National Defense Service Medal, the Global War on Terrorism Service Medal, Iraq Campaign Medal with Campaign Star, and numerous ribbons and badges. Applicant held a high level security clearance while in the Army. As he understood, his clearance lapsed after his discharge.³

Applicant completed two semesters of college at a community college and completed some college courses while in the Army. He is now a full-time college sophomore at a major university. He is studying international affairs. He is single.⁴

The SOR alleges the use of cocaine on one occasion in February 2012 and of MDMA (Ecstasy) on one occasion in March 2012, plus the sporadic use of marijuana between February and August 2012. Applicant listed this drug use on his e-QIP and acknowledged his drug use in his response to the SOR.⁵

Two months after his discharge from the Army, Applicant spent an evening sitting with friends. During the evening, he experimented with MDMA (Ecstasy) once. He found it enjoyable, but decided that one use was enough. He did not solicit this drug nor did he pay for it. Rather, a former soldier provided the drug in pill form to him in October 2011 and before he left the Army.⁶ He set the pill aside and found it when he unpacked after his discharge from the Army. He stated that he was not motivated by alcohol to use this drug nor was he thinking about the future when he used it. He tried it as he was transitioning to civilian life. He has no intent to use the drug again.⁷

About one month later, in March 2012, Applicant visited friends in a city near where he had been stationed in the Army. He and his friends celebrated St. Patrick's Day at local bars and pubs. He consumed alcohol to the point of intoxication. While in the intoxicated state, someone offered him cocaine, which he used once in the men's room in a bar. He did not solicit the drug nor did he purchase it. He described his decision to use cocaine as unwise, uninformed, and regrettable. He did not like the

³AE E; Tr. 19.

⁴GE 1; Tr. 19-20.

⁵Response to SOR; GE 1.

⁶Applicant was told the pill was a "molly" which he did not realize at the time was the illegal drug MDMA. Tr. 35-36.

⁷GE 1; Tr. 21-24.

negative effect of this drug and decided not to use the drug in the future as this was not the lifestyle he wanted to live.⁸

In early 2012, Applicant met his now former girlfriend, who regularly used marijuana. Between February 2012 and August 2012, he experimented with marijuana out of curiosity. He explained that it was a popular recreational drug, and he decided to try it. He smoked small amounts, between five and ten times. The marijuana left him with dizziness and made him lethargic. On his last use of marijuana, he smoked more than he had smoked previously, which made him more lethargic than earlier. At this point, he decided that using marijuana was pointless and that it was not something he wanted to do. He last used marijuana in August 2012. He persuaded his former girlfriend to stop using marijuana, which she did in August 2012. He and his girlfriend ended their relationship in January 2014.⁹

As he learned the role and duties of an FSO, Applicant realized that he needed to report his drug use. He requested his assistant FSO to file an incident report about his drug use. He also reported his drug use to those in his company whom he believed needed to know. Applicant does not associate with any one who uses marijuana or any other illegal drug. He indicated on his e-QIP that he did not intend to use drugs in the future. Applicant credibly testified at the hearing about his past drug use and about his future intent not to use drugs.¹⁰

Applicant's supervisor testified. He interacts with Applicant on a daily basis at work and once a week outside of work. Because of Applicant's work as the FSO, the company received a superior rating on its facility in July 2014. Applicant self-reported his drug use to him. He described Applicant as an outstanding person and a person of integrity. He considers Applicant trustworthy, dependable, honest, and reliable. He has not seen Applicant use drugs when they socialize. He supports Applicant for a security clearance.¹¹

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.

⁸GE 1; Tr. 24-26.

⁹GE 1; Tr. 26-29,

¹⁰GE 1; Tr. 40-41.

¹¹Tr. 42-47.

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 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); and

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

In 2012, Applicant experimented with cocaine and MDMA (Ecstasy) on one occasion each. He also used marijuana sporadically between February 2012 and August 2012. To use, these drugs, he possessed them. Applicant did not purchase or sell any of these drugs. AG ¶¶ 25(a) and 25(c) are applicable.

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

(4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant last used illegal drugs more than two years ago. His experimentation with marijuana lasted about six months in 2012. He tried cocaine and MDMA (Ecstasy) once and decided against any further use. He convinced his girlfriend not to use marijuana during their relationship. He and his girlfriend ended their relationship, and he does not associate with drug users. He credibly testified to his intent not to use drugs in the future. He recognized that he made a poor decision to use these drugs, and he regrets his use of them. He demonstrated remorse for his decision to experiment with these drugs. It is highly unlikely that he will use these drugs again. His past use does not reflect on his current, reliability, trustworthiness and good judgment. He has mitigated the security concerns under AG ¶¶ 26(a) and 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 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.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant experimented with marijuana for about six months and with cocaine and MDMA

(Ecstasy) once each. He decided against any further use of cocaine and MDMA (Ecstasy) immediately. After several uses of marijuana, he decided that this drug would not be a part of his life and that drug use was not a lifestyle he wanted. He credibly testified about his drug use, his poor decision-making on drug experimentation, and his intent not to use illegal drugs in the future. He self-reported his drug use to DOD and to his senior management. He worked hard and successfully as his company's FSO for a year. His work resulted in the implementation of a master security plan which received full accreditation from the DOD. He raised his company's vulnerability assessment from commendable to superior in less than one year. Applicant has been forthright about his drug use through the investigation process and at the hearing. His decision to experiment with illegal drugs more than two years ago does not reflect negatively on his current reliability, judgment, and trustworthiness or his ability to hold a security clearance.

Overall, 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 mitigated the security concerns arising from his drug use 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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	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.

MARY E. HENRY
Administrative Judge