



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



In the matter of:)
)
) ISCR Case No. 14-00758
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: Kristen E. Ittig, Esq.

October 29, 2014

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant failed to mitigate the Drug Involvement security concerns that arose from his drug use from January 2003 to November 2013. He mitigated the Foreign Influence concerns that arose out of his parents-in-law’s Taiwanese citizenship and residence. Eligibility for access to classified information is denied.

Statement of the Case

On November 7, 2013, Applicant submitted an Electronic Questionnaires for Investigative Processing (e-QIP). On April 10, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H, Drug Involvement, and Guideline B, Foreign Influence. 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 answered the Statement of Reasons on April 29, 2014, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on August 13, 2014. A notice of hearing was issued to Applicant on August 18, 2014, scheduling a hearing for September 23, 2014. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 2, which were admitted without objection. Applicant offered Exhibits (AE) A through F, which were admitted without objection. Applicant testified on his own behalf and called two witnesses. At the hearing, Applicant requested that the record be left open to allow him to submit additional evidence and his request was granted. Applicant presented three additional exhibits, marked AE G through AE I. Department Counsel had no objection to AE G through AE I, and they were admitted into the record. DOHA received the transcript of the hearing (Tr.) on October 7, 2014.

Procedural Rulings

Request to take Administrative Notice

The Government requested I take administrative notice of certain facts relating to Taiwan. Department Counsel provided a five-page summary of the facts, with citations to 19 Government documents pertaining to Taiwan, marked HE I. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, and not subject to reasonable dispute. They are set out in the Findings of Fact.

Amendment to the SOR

Pursuant to Additional Procedural Guidance ¶¶ E3.1.2, E3.1.3, E3.1.7, and E3.1.13 of the Directive, Department Counsel moved to amend the SOR ¶ 1.b to correct a typographical error, which alleged Applicant used mushrooms and LSD, approximately once a year, from 2006 to January 2012. Applicant had no objection to the amendment and I granted the motion. (Tr.18.) SOR ¶ 1.b was amended to read:

1.b You used mushrooms and LSD, approximately once a year, from 2006 to January 2012.

Findings of Fact

Applicant is a 43-year-old natural born U.S. citizen. He is an employee of a government contractor, where he has worked since 2009. He has a master's degree in an engineering field. Applicant was married for approximately 15 years to his first wife. They divorced in 2009. He married his second wife, a naturalized U.S. citizen, in May 2012. They currently reside together. (GE 1; GE 2; Tr. 33-36, 59, 64.)

Applicant's wife was born in Taiwan. His mother-in-law and father-in-law are citizens of Taiwan and both currently reside in Taiwan.¹ They are retired and divorced. Applicant's wife has a strained relationship with her parents. She has brief phone calls with her mother approximately once per month. She sends no support or gifts to her mother. Her brother supports their mother. Applicant's wife speaks to her father approximately once per year. She last saw her parents ten years ago. Applicant testified that his wife was "far from close" to either parent. He has not met his parents-in-law. He spoke to them each once on the phone, in separate conversations, but found the conversation difficult. He speaks no Chinese and they speak little English. (AE F; Tr. 38-44.)

Applicant first used drugs in approximately January 2003. He tried cocaine in a social setting. After that, Applicant began experimenting with a variety of drugs to satisfy his "scientific curiosity" about drugs. (Tr. 46.) He explained that he had Asperger's syndrome and had difficulty socializing. He provided a copy of his diagnosis into evidence. (AE I.) He experimented using illegal drugs as a social lubricant. He used drugs recreationally from 2003 to approximately 2012. His drug use included: cocaine, approximately four times per year from January 2003 to January 2011; ketamine, approximately once per year from January 2003 to January 2011; ecstasy, approximately four times per year from January 2003 to January 2011; mushrooms and LSD, approximately once per year from 2006 to January 2012; and marijuana approximately six times per year from January 2003 to 2011. He also used medical marijuana with a physician's recommendation from at least 2012 to November 2013. (GE 1; GE 2; Tr. 45-53, 61, 66-75.)

After Applicant met and married his wife, he decided he no longer wished to be a social drug user. He stopped using cocaine, ketamine, ecstasy, mushrooms, and LSD. He terminated friendships with those that provided him drugs. He ceased going to parties, raves, and social gatherings where drugs were present. (Tr. 51-54, 97-99.)

Applicant acknowledged, during his January 7, 2014 personal subject interview, that he retained possession of a vial of liquid LSD that he had purchased prior to severing his friendships with other drug users. He indicated that he "may use" the remaining LSD in the future, but was "not sure" if he would use it. He testified he purchased the vial for approximately \$400. He explained that during the interview he thought he might use LSD in the future because it was still in his possession, but he later discovered that the contents of the vial had dried up. He threw it away. He testified that after that vial was gone, he had no way to access drugs again. The act of throwing away the vile was the end of any intent to use drugs. (GE 2; Tr. 53-54, 99.)

Despite terminating his use of cocaine, ketamine, ecstasy, mushrooms, and LSD in approximately 2011, Applicant used medical marijuana until November 2013. He obtained two medical marijuana recommendations from doctors, according to the laws of his state, based on his diagnosis regarding his antisocial tendencies. He used the recommendations to purchase marijuana at a medical marijuana dispensary twice. He

¹ Applicant's father-in-law no longer resides in the Philippines.

smoked the marijuana while watching movies. He indicated during his January 7, 2014 personal subject interview that he intended to continue his medical marijuana use. (GE 2.) He now understands that, despite state laws authorizing the use of medical marijuana, its use is in violation of federal laws. Applicant had not previously applied for a security clearance and was unfamiliar with the rules and regulations. His medical marijuana card has expired. He no longer possesses marijuana or any drug-related paraphernalia. He has vowed never to use illegal substances again. Applicant self-procured two 12-panel drug screening tests on June 9, 2014, and July 18, 2014. Both tests were negative for all illegal substances. (AE B; AE C; Tr. 54-58, 76-90, 94, 100.)

Applicant testified that he knew it was illegal to use controlled substances, but that he wanted to find out for himself what the drugs were like. (Tr. 62.) He understood that he had no legal right to experiment with drugs, but believed it was consistent with his ethics to use cocaine. (Tr. 61-64.) He stated that he hated that it was illegal, but believed his drug use was not hurting anyone else. However, he explained that violations of security regulations were unlikely because he realized that he could potentially hurt someone through a breach. He promised to self-report any future drug use and testified about other instances in which he had reported problems at work. (Tr. 102-104.)

Applicant signed a statement expressing his intent to abstain from illegal substances in the future. He has been honest and candid with the Government about his past drug use. (AE A; Tr. 55.)

Applicant enjoys hiking and other outdoor activities. He is an Eagle Scout. He is fiscally responsible and purchased his home without taking a mortgage. Additionally, he documented significant assets in the U.S. totaling more than \$1,500,000. He pays his taxes and performs jury duty. (AE H; AE I; Tr. 33.)

Applicant is respected by those who know him, as verified by his supervisor and a senior vice president at his company, both of whom testified on Applicant's behalf and submitted letters of support. They are aware of Applicant's drug use. They consider Applicant to be honest, dedicated, reliable, and trustworthy. He has an exceptional work ethic. He is viewed by his employer as a rising star. (AE D; AE E; Tr. 115-147.)

Taiwan

Taiwan was identified as an active collector of U.S. economic intelligence in the National Counterintelligence Center's 2000 Annual Report to Congress on Foreign Economic Collection and Industrial Espionage. Similarly, the 2008 Annual Report to Congress on Foreign Economic Collection and Industrial Espionage lists Taiwan as being involved with criminal espionage and export controls enforcement cases in 2008. Additionally, there have been various court cases involving the illegal export, or attempted illegal export, of U.S. restricted dual-use technology to Taiwan, including a criminal conviction of the Principal Deputy Assistant Secretary of State for East Asian and Pacific Affairs for illegally removing classified materials. The PRC also maintains

intelligence operations in Taiwan through a bureau utilizing PRC nationals with Taiwanese connections. (HE II.)

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.f). Applicant possessed and used marijuana, cocaine, ketamine, ecstasy, mushrooms, and LSD over an eleven-year period. He admitted purchasing LSD. The facts established through the Government's evidence and 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 occurred while he was a mature adult. It happened in social settings over an eleven-year period, up to 2013. He used illegal drugs because they aided him in socializing with others. As of January 2014, Applicant expressed an intent to continue medicinal marijuana use and did not rule out future LSD use. While he now pledges abstinence, his personal ethics allow him to use illegal substances as long as he believes he is not hurting others. He has not demonstrated that his drug use is

unlikely to recur. His past history of drug use continues to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 26(a) is not fully applicable.

AG ¶ 26(b) provides some mitigation. Applicant expressed his intent not to use illegal drugs in the future. He disassociated from drug-using friends and avoids the environment where he used drugs in the past. He signed a statement of intent with automatic revocation of clearance for any violation. Applicant's reputation for honesty, coupled with his candor concerning his past drug use, adds weight to his commitment to abstain from illegal drug use. These factors weigh in the Applicant's favor and are mitigating, in part. However, the recency of his last marijuana use, and his statements during the personal subject interview, indicate that Applicant's commitment to abstinence is recent. It is too soon to determine whether Applicant will abstain from the use of illegal substances in the future, given his extensive history with drugs and his January 2014 statements that indicated he intended to continue using marijuana and possibly LSD. His two negative drug tests confirm abstinence shortly before this hearing, but are insufficient to mitigate questions about his ability or willingness to comply with laws, rules, and regulations in the future, given his history of illegal drug use.

Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

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.

The following conditions could raise security concerns under 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; and

(d) sharing living quarters with a person or persons, regardless of their citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure or coercion.

AG ¶ 7(a) requires the presence of family members (or business or professional associates, friends, or other persons) who are citizens and/or residents of a foreign nation, for which there is substantial evidence of a heightened risk. The heightened risk required to raise one of these disqualifying conditions is a relatively low standard. Heightened risk denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or substantial assets in a foreign nation. Taiwan is a country that actively collects industrial information and engages in industrial espionage, and therefore a heightened risk is present. Applicant's mother-in-law and father-in-law are citizens and residents of Taiwan. The evidence is sufficient to raise concerns under AG ¶ 7(a).

Applicant's wife, with whom he shares a residence, has ties to her parents in Taiwan. Such relationships could potentially create a heightened risk of foreign inducement, manipulation, pressure or coercion due to her bonds of affection to her Taiwanese parents and Taiwan's history of efforts to commit industrial espionage. AG ¶ 7(d) applies.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8, including:

(a) the nature of the relationships with foreign persons, the country in which these people are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

AG ¶¶ 8(a) and 8(c) have applicability. Applicant's wife has monthly communication with her mother, and less frequent communication with her father, both of whom are citizens and residents of Taiwan. Applicant has only spoken to his parents-in-law once. His wife has strained relations with her parents who are retired and not supported by the Taiwanese government. There is little likelihood that Applicant's relationships with his in-laws, who are citizens and residents of Taiwan, could create a risk for foreign influence or exploitation. Because he is unable to communicate with them and his wife is not close to them, there is little risk he would be placed in a position of having to choose between the interests of his in-laws and the interests of the United States.

A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant was born and raised in the United States. He achieved Eagle Scout status. He earned a graduate degree from a U.S. university. He owns a home in the United States. All of his investments are located in the United States. Based on his connections and history in the United States, Applicant can be expected to resolve any conflict of interest in favor of the U.S. interest. There is no conflict of interest in this case, as he has virtually no relationship with his wife's parents. AG ¶ 8(b) applies.

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. Applicant's infrequent contact with his in-laws in Taiwan creates minimal concern. However, his history of drug involvement from January 2003 to November 2013 continues to cause concern under the security guidelines. He knowingly chose to disregard U.S. drug laws during those years. He was an adult throughout his use of illegal substances, and willingly put self-interest above the laws that he knew forbade their use. Applicant is respected by those who know him. He has a reputation for honesty and trustworthiness. However, not enough time has passed to demonstrate Applicant will continue to abstain from illegal substances (including the use of medicinal marijuana). Other than personal assertions and two recent drug screenings, he presented no persuasive evidence of rehabilitation, such as participation in a substance abuse program or an evaluation by a duly qualified medical professional confirming abstinence from illegal drugs. The record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant should not 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:	AGAINST APPLICANT
Subparagraphs 1.a through 1f:	Against Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 1.a through 1b:	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.

Jennifer I. Goldstein
Administrative Judge