



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



In the matter of:)
)
) ISCR Case No. 14-00955
)
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel
For Applicant: *Pro se*

October 22, 2014

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on December 17, 2013. On April 30, 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 answered the SOR in writing (Answer) on May 14, 2014, and requested an Administrative Determination by an administrative judge. Department Counsel issued a File of Relevant Material (FORM) on June 13, 2014. Applicant submitted nothing in response to the FORM. The case was assigned to me on September 15, 2014. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, dated May 14, 2014, Applicant admitted all the factual allegations in the three Subparagraphs of the SOR, with explanations.

Guideline H - Drug Involvement

Appellant is 25 years of age. (Item 4 at page 5.) He is a college graduate, and currently is in a Master's Degree program. (Item 4 at pages 15~16.) He seeks a security clearance in connection with his employment as Senior Geospatial Analyst. (Item 4 at page 17.)

1.a. Applicant used Marijuana from about February of 2007 until about February of 2013, a period of six years. (Item 4 at page 56.) He describes his usage in the following terms: "At most, used once or twice a month with friends, but often not used for months at a time. Use was primarily while attending college." (*Id*, see also Item 5 at page 3.) In his Answer, Applicant averred that he "did not intend to use marijuana again." (Answer at page 1.)

1.b. Applicant used MDMA (Ecstasy), an illegal stimulant, "on two separate occasions (*sic*) socially," once in December of 2011 and again on March of 2012. (Item 4 at page 56.) He "bought the drug both times for \$20 a tablet. . . . The drug made . . . [applicant] feel excited, energetic and happy." (Item 5 at page 3.) In his Answer, Applicant averred that he "did not intend to use MDMA again." (Answer at page 2.)

1.c. Applicant used Adderall, a prescription drug, without a prescription, "a few times throughout college to study for exams," between about September of 2009 to December of 2010. (Item 4 at page 57.) He "purchased the drug for \$5 a pill." (Item 5 at page 3.) In his Answer, Applicant also averred that he "did not intend to use Adderall again." (Answer at page 2.)

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 AG ¶ 2 describing 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 the applicant or proven by Department Counsel. . . .” The applicant 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. 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 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

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. In addition, “*any illegal . . . purchase*” under Subparagraph 25(c) may be disqualifying. Here, Applicant used marijuana over a period of six years, with his last usage in February of 2013, only about 14 months prior to his Answer to the SOR. He also illegally purchased and used MDMA, and Adderall, without having a prescription for the purchase, on numerous occasions.

I find no countervailing mitigating conditions that are applicable here. Under Subparagraph 26(a), it may be mitigating where Applicant's "*behavior happened so long ago . . . or happened under such unusual circumstances that it is unlikely to recur . . .*" There was nothing unusual about Applicant's drug usage, which ended in February of 2013. Furthermore, it is too soon to say it will not happen in the future. However, if Applicant continues his abstinence from illegal drugs for a few more years, he should not hesitate from applying for a security clearance in the future.

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. The Applicant has submitted nothing further in support of his request for a security clearance. The record evidence thus leaves me with questions and 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.:	Against Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	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