



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



In the matter of:)
)
) ISCR Case No. 14-01004
)
)
Applicant for Security Clearance)

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: John V. Berry, Esq.

08/29/2014

Decision

MASON, Paul J., Administrative Judge:

Applicant’s convincing evidence in mitigation is sufficient to overcome the adverse security concerns under the guidelines for drug involvement and personal conduct. Eligibility for access to classified information is granted.

Statement of the Case

Applicant completed and signed his Electronic Questionnaire for Investigations Processing (e-QIP), Government’s Exhibit (GE) 1, on June 21, 2013. He was interviewed by an investigator from the Office of Personnel Management (OPM) on October 22, 2013. (GE 2)

On April 29, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under drug involvement (Guideline H), and personal conduct (Guideline E). The action was taken pursuant to 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) implemented by the Department of Defense on September 1, 2006.

Applicant submitted his response to the SOR on May 19, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 16, 2014, for a hearing on August 13, 2014. The hearing was held as scheduled. The Government's three exhibits (GE 1-GE 3) and Applicant's five exhibits (AE A-AE E) were admitted into evidence without objection. The record remained open until August 28, 2014, for Applicant's post-hearing submissions. His 2012 and 2013 performance evaluations (AE F), which were received by this office on August 26, 2014, were admitted into evidence without objection. The transcript was received on August 21, 2014. The record in this case closed on August 28, 2014.

Findings of Fact

Applicant admitted the one allegation under the drug involvement guideline (SOR 1). He admitted the one allegation under the personal conduct guideline (SOR 2).

Applicant is 28 years old and single. In June 2008, he received a bachelor of science degree in geography. In September 2008, he began working for a defense contractor as a quality control technician and received a Department of Defense security clearance. The job was located in a small town where activities not related to work were limited. Applicant's only friends during his four years of employment were his coworkers. He worked at this job until March 2012. (Tr. 24, 27)

In March 2009, Applicant decided to attend a St. Patrick's Day party. To ensure that he would not drive while under the influence, he took a taxi to and from the party. It was very late when he returned to his apartment. He discovered he left his keys at the party. He offered no explanation for why he left his keys at the party. He was unable to contact anyone because his cell phone was dead. He decided to go to sleep in the apartment hallway. His neighbor called the police after hearing unrecognizable noises in the apartment hallway. When the police arrived at the apartment, they placed him under arrest for disorderly conduct, a misdemeanor. (SOR 2.a) Applicant informed his facility security officer about the arrest the next day and reported the incident on his June 2013 e-QIP. He pleaded guilty to the offense and was fined. The crime was expunged in October 2011. (GE 1, 2; Response to SOR; Tr. 30-34; AE D)

Between June 2009 and his 24th birthday in January 2010, Applicant used marijuana about five times with two coworkers at their homes. He knew that marijuana use was illegal and was improper for a security clearance holder, but did not think about his use until after he had used the drug. He realizes that he made a bad choice in using marijuana after being granted a security clearance. He has not used any illegal drug since January 2010. His last contact with his drug-using coworkers was at the previous job location in March 2012. Applicant reported his marijuana use in his June 2013 e-QIP. He also admitted in the security form that he had used illegal drugs while possessing a security clearance. On May 14, 2014, Applicant signed a statement of intention not to use, cultivate, purchase, or distribute any illegal or unprescribed drug in the future. His statement continues that if he should use drugs, his security clearance shall be revoked. In the statement of intention, he noted that he took a drug test in March 2012, when he was hired at his current job. The test results were negative. (GE 1, GE 2; AE E; Tr. 24-28, 42-46)

After moving to his current location in March 2012 to begin his analyst position, he made constructive changes in his lifestyle. With the assistance of other friends who are members of his university's alumni association, he has steadily expanded his network of friends and increased his activities in this area. He is in a serious relationship with a person who stabilized his life. She has not observed him use drugs since she met and began dating him in July 2013. According to their current schedule, they regularly meet at his apartment on the weekends and may occasionally socialize with friends at different locations in the area. (Tr. 26-28, 34-36; AE A, AE D)

Character Evidence

Applicant submitted three affidavits from three character references. On August 8, 2014, Applicant's girlfriend signed a notarized affidavit indicating that she believes he is trustworthy and does not use drugs. On August 7, 2014, Applicant's supervisor and friend indicated that he met Applicant in March 2012 and has become a friend. The supervisor recommends Applicant for a security clearance based on the responsibility he consistently demonstrates. On August 8, 2014, another coworker, who met Applicant in March 2012, believes he is a team player that also demonstrates honesty and trustworthiness at work.

Witness 1 has held a security clearance for the last five years. She has known Applicant for eight years, having met him while both were attending the same university. In the last three years, witness 1 has become a close friend. They attend sporting events sponsored by the university alumni association. They also meet for brunch at different restaurants. Witness 1 has never seen Applicant use illegal drugs. Even after being told about his disorderly conduct in March 2009 and his brief use of marijuana in the latter part of the 2009, she still believes Applicant to be an outstanding person who is responsible and honest. (Tr. 54-62)

Witness 2 also knows Applicant from the university they attended. Their relationship has become closer since Applicant moved to the area in March 2012 to begin his current job. Occasionally, witness 2 and Applicant join others for canoe trips and events at the pool in his apartment complex. On other occasions, she will join Applicant and others at tap rooms for happy hours or birthdays. Witness 2 has never seen Applicant use drugs. He is honest and responsible. Even after learning of his arrest and brief drug use in 2009, witness 2's favorable opinion of Applicant would not change. (Tr. 65-72)

On August 26, 2014, Applicant provided his performance evaluations for 2012 and 2013. An unidentified supervisor wrote in the 2012 evaluation that Applicant became a reliable team player and helped the team generate more positive results than in recent years. In 2013, an unidentified supervisor noted that Applicant shouldered even more responsibility in finishing projects. The supervisor opined that more attention to detail by Applicant to smaller projects will enable him to reach the next level of quality assurance.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. Each guideline lists potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

The disqualifying and mitigating conditions should also be evaluated in the context of nine general factors of the whole-person concept so that all available information, past and present, favorable and unfavorable, is a part of the decision for or against an applicant's security clearance application. Such decisions entail a certain degree of legally permissible extrapolation as to the potential, rather than actual, risk of compromise of classified information.

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 of establishing that it is clearly consistent with the national interest to grant him a security clearance.

Analysis

Personal Conduct

The security concern for personal conduct is set forth in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The potentially pertinent disqualifying condition under AG ¶ 16 are:

(c) credible adverse information in several adjudicative areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that he may not properly safeguard classified information.

Applicant exercised good judgment after deciding he was going to attend a Saint Patrick's Day party in March 2009. He made arrangements to take a taxi to and from the party so that he would probably not have to jeopardize his driver's license and life by attempting to drive home while under the influence of alcohol. Leaving his keys at the party suggests that he was probably under the influence of alcohol when he left the party. AG ¶ 16(c) is established.

The mitigating conditions under AG ¶ 17 that are potentially pertinent are:

(c) the offense was so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate stressors, circumstances, or factors that caused untrustworthy, unreliable or other inappropriate behavior, and such behavior is unlikely to recur.

The March 2009 disorderly conduct was a demeanor that occurred over five years ago. The offense occurred under the unusual circumstances of being unable to reenter his apartment after leaving his keys at a party. Compounding his poor judgment was being unable to contact anyone due to a dead cell phone. Applicant has never committed any kind of conduct like this and has no criminal record. His constructive lifestyle changes and favorable character evidence since March 2012 justify complete confidence in his reliability, trustworthiness, and judgment at the present time. AG ¶¶ 17(c) and (d) apply.

Drug involvement

Paragraph 24 of the AG sets forth the security concern for 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;

The pertinent disqualifying conditions under AG ¶ 25 that may be disqualifying are:

- (a) any drug use;¹
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (g) any illegal drug use after being granted a security clearance.

Applicant reported in his June 2013 e-QIP that he had used marijuana and also that he had used illegal drugs while holding a security clearance. He disclosed this information in his October 2013 interview, his response to the SOR allegation, and at the hearing. While his use was brief, it engenders security concerns under AG ¶¶ 25 (a), (c), and (g).

The potentially mitigating conditions under AG ¶ 26 of the drug involvement guideline are:

- (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

¹ Drug use is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction. (Directive at 34)

(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 are used, (3) an appropriate period of abstinence, and (4) a signed statement of intent with automatic revocation of clearance for any violation.

Five years ago in 2009, Applicant was 23 years old when he used marijuana five times until January 2010. He credibly testified that he has used no drugs since January 2010. His changed lifestyle persuades me to believe that he will stand by his intention not to use any drugs in the future. AG ¶ 26(a) applies.

Applicant's last contact with drug users was in 2012 at his previous job location. Since March 2012, he has developed a network of friends and activities that will ensure his past drug use will not recur. His 2012 and 2013 performance evaluations demonstrate he is a valuable contributor at work. He has provided a signed statement of his intent not to use illegal drugs in the future, with an automatic revocation of his security clearance for any violation. AG ¶¶ 26(a) and 26(b) apply in their entirety.

Whole-Person Concept

I have examined the evidence under the disqualifying and mitigating conditions of drug involvement and personal conduct. I have also weighed this case in the context of nine factors of the whole-person concept. These factors are set forth in 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 the participation was 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.

The ultimate determination of whether to grant eligibility for a security clearance must be a commonsense judgment based on careful consideration of the guidelines and the whole-person concept. See AG ¶ 2(c).

Applicant has provided persuasive evidence that his drug use will remain in the past. His positive lifestyle changes since March 2012 are corroborated by credible testimony and character references, together with two favorable performance evaluations. He has signed a statement that his clearance will automatically be revoked for any violation. Stated simply, Applicant realizes that he will place his security clearance in immediate jeopardy should he

use any illegal drugs in the future. Considering the entire record in the context of the specific disqualifying and mitigating conditions and the general factors of the whole-person concept, Applicant has mitigated the security concerns related to drug involvement and personal conduct.

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 (Drug Involvement):	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2 (Personal Conduct):	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Paul J. Mason
Administrative Judge