



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



In the matter of:)
)
) ISCR Case No. 14-01065
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

09/15/2014

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny him a security clearance to work in the defense industry. The security concern stemming from his marijuana use while in college is sufficiently explained and mitigated. Accordingly, this case is decided for Applicant.

Statement of the Case

On or about April 30, 2014, the Department of Defense (DOD) sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant access to classified information.¹ The SOR

¹ This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply here. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

is similar to a complaint, and it detailed the reasons for the action under the security guideline known as Guideline H for drug involvement. Applicant answered the SOR on May 14, 2014. Neither Applicant nor Department Counsel requested a hearing, and so, the case will be decided on the written record.²

Thereafter, on June 24, 2014, Department Counsel submitted all relevant and material information that could be adduced at a hearing.³ This so-called file of relevant material (FORM) was mailed to Applicant, who received it July 8, 2014. To date, he has not replied to the FORM. The case was assigned to me September 11, 2014.

Findings of Fact

Applicant is a 24-year-old employee who is seeking to obtain a security clearance for the first time. He earned a bachelor's degree from a large state university, which he attended during 2008–2012. He then earned a master's degree from another university in 2013. He has never married and has no children.

Applicant is now working as an associate for a professional services firm that focuses on privately-held businesses, public-sector organizations, and individuals. As part of his employment, he completed a security clearance application in July 2013, which is the same month he began his job.⁴ In doing so, he disclosed illegal drug use within the last seven years in response to Question 23 of the application.⁵

In particular, Applicant reported smoking marijuana with his friends while in college. He estimated using marijuana from February 2009 to March 2013. He described his marijuana use as recreational, as he used it with friends or in social settings. He estimated the frequency of his marijuana use as irregular, although he progressed to the point where during his senior year of college he smoked weekly during a five-month period. Applicant stated that he stopped using marijuana as soon as he knew he was going to work for his current employer. He also stated that he has too much to lose if he continues using marijuana, that smoking is harmful to his health, that he does not want marijuana use to affect his professional or personal life, and that he recognizes that marijuana use is inconsistent with his current responsibilities.

² Directive, Enclosure 3, ¶ E3.1.7.

³ The file of relevant material consists of Department Counsel's written brief and supporting documents, some of which may be identified as evidentiary exhibits in this decision.

⁴ Exhibit 5.

⁵ Exhibit 5 at 49 and 50.

Law and Policies

It is well-established law that no one has a right to a security clearance.⁶ As noted by the Supreme Court in *Department of Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁷ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.⁸ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.⁹

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁰ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹¹ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹² In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹³ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹⁴ The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.¹⁵

The AG set forth the relevant standards to consider when evaluating a person’s security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense

⁶ *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

⁷ 484 U.S. at 531.

⁸ Directive, ¶ 3.2.

⁹ Directive, ¶ 3.2.

¹⁰ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹¹ Directive, Enclosure 3, ¶ E3.1.14.

¹² Directive, Enclosure 3, ¶ E3.1.15.

¹³ Directive, Enclosure 3, ¶ E3.1.15.

¹⁴ *Egan*, 484 U.S. at 531.

¹⁵ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

decision based upon consideration of the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

The Government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.¹⁶ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

Discussion

Under Guideline H,¹⁷ the security concern is that the use of an illegal drug, or misuse of a prescription drug, raises questions about a person's judgment, reliability, and trustworthiness. In this context, the term drug abuse means "the illegal use of a drug or use of a legal drug in a manner that deviates from the approved medical direction."¹⁸ The guideline also expresses a concern that drug involvement may call into question a person's ability or willingness to follow laws, rules, and regulations.

Here, the evidence is sufficient to establish a security concern based on Applicant's history of drug abuse.¹⁹ The evidence shows he engaged in drug abuse by using marijuana while in college. His drug abuse reflects negatively on his judgment, reliability, trustworthiness, and willingness to follow laws, rules, and regulations.

There are four mitigating conditions to consider under Guideline H.²⁰ In light of the evidence here, AG ¶ 26(b) is most pertinent because I am persuaded that Applicant has demonstrated an intent not to abuse any drugs in the future. I reach that conclusion for the following reasons: (1) his use of marijuana was irregular for the most part and usually limited to social-type settings while a college student; (2) he has not engaged in drug abuse since March 2013; and (3) he has pledged, in his security clearance application, that he will not engage in drug abuse in the future. In addition, he receives credit for disclosing his drug abuse in his security clearance application and during the security clearance process. By doing so, he did what is expected of a person seeking access to classified information. In summary, viewing the evidence as a whole, I am persuaded that his drug abuse has ended and it will not occur again.

Applicant's history of drug abuse does not justify current doubt about his judgment, reliability, trustworthiness, and ability to protect classified information. In

¹⁶ Executive Order 10865, § 7.

¹⁷ AG ¶¶ 24–26 (setting forth the security concern and the disqualifying and mitigating conditions).

¹⁸ AG ¶ 24(b).

¹⁹ AG ¶ 25(a).

²⁰ AG ¶ 26(a)–(d).

reaching this conclusion, I considered the whole-person concept.²¹ I also weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. Accordingly, I conclude he has met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

The formal findings on the SOR allegations are:

Paragraph 1, Guideline H: For Applicant

Subparagraph 1.a: For Applicant

Conclusion

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Michael H. Leonard
Administrative Judge

²¹ AG ¶ 2(a)(1)–(9).