



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-01152

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro se*

09/03/2014

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant mitigated the security concerns regarding his use of drugs. Eligibility for access to classified information is granted.

History of Case

On May 13, 2014, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DoD adjudicators could not make the affirmative determination of eligibility for a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. 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 (AGs) implemented by DoD on September 1, 2006.

Applicant responded to the SOR on May 23, 2014, and requested a hearing. The case was assigned to me on June 26, 2014, and was scheduled for hearing on July 22,

2014. At hearing, the Government's case consisted of one exhibit (GE 1). Applicant relied on two witnesses (including himself) and no exhibits. The transcript (Tr.) was received on July 31, 2014.

Summary of Pleadings

Under Guideline H, Applicant allegedly used marijuana in approximately September 2010 after being granted a security clearance in August 2003. No further details are provided.

In his response to the SOR, Applicant admitted his isolated use of marijuana in September 2010 while vacationing in Greece. He expressed understanding that his actions could call into question his trustworthiness and ability to do his job. He claimed his actions could not impair his ability to comply with all laws, rules, and regulations and assured he would not again associate himself with illegal drugs or expose himself to circumstances that could produce such irresponsible behavior.

Findings of Fact

Applicant is a 42-year-old field services engineer for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Background

Applicant enlisted in the Marine Corps in January 1990 (GE 1) and served five years of active duty before his discharge in July 1995. (GE 1; Tr. 33) He earned an associate of arts degree in June 1997. Applicant married his spouse in November 1997 and has two children from this marriage: ages 13 and 11, respectively. (GE 1; tr. 35) He has held a security clearance since August 2003.

Drug history

Applicant presents with some past drug use history. In high school, he smoked marijuana on a couple of occasions with classmates, but never became an active user of the substance. (GE 1; Tr. 33) While on vacation in Greece in September 2010, he used marijuana on a single occasion with co-workers. (GE 1; Tr. 28-32) He had consumed a couple of beers at the time and chose to include himself in an isolated smoking session with two co-workers. He no longer maintains contact with these co-workers, who are not known to have any contact with his new company. (Tr. 31-32)

Applicant has strong religious convictions and family ties and has not resumed drug use of any kind since his isolated use of marijuana in September 2010. (Tr. 28-29, 34) Except for his isolated use of marijuana in September 2010, he has never used marijuana or any illegal drugs since high school. (Tr. 32-33, 36-37)

Applicant has never received any drug counseling. (Tr. 34) He regrets the 2010 incident and acknowledges using "just extreme poor judgment." (Tr. 28)

Endorsements

Applicant is well-regarded by his direct supervisor, who has worked with Applicant for over 16 years. (Tr. 23) He finds Applicant to be a very dependable and trustworthy engineer who cares deeply about the Navy and the Government. (Tr. 23-24) He knows Applicant to consistently follow Government rules and regulations. (Tr. 25)

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering security clearance cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information.

The AGs include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns." They must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c)

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the revised AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person.

The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. The following AG ¶ 2(a) factors are pertinent: (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.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Drug Involvement

The Concern: 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 AG ¶ 24.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. "[S]ecurity-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

While on vacation in Greece in September 2010, Applicant used marijuana in one isolated instance with co-workers. At the time of his use, he held a security clearance and was aware of DoD policies in force banning the use of illegal drugs.

On the strength of the evidence presented, several disqualifying conditions of the Adjudicative Guidelines for drug abuse are applicable: DC ¶ 25(a), "any drug abuse," DC ¶ 25(c), "illegal possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia," and DC ¶ 25(g), "any illegal drug use after being granted a security clearance." Judgment concerns exist over Applicant's past drug use. He has some recurrent history of marijuana use on a limited scale and less than four years of demonstrated abstinence.

Considering the isolated nature of Applicant's most recent marijuana use (2010), enough time has elapsed to facilitate safe predictable judgments that he will not return to illegal drug use in the foreseeable future. Pertinent mitigating conditions covered by AG ¶ 24 are available to Applicant. MC ¶ 24(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 MC ¶ 24(b), "a demonstrated intent not to use any drugs in the future, such as (1) disassociation from drug-using associates and contacts, and (3) an appropriate period of abstinence," apply to Applicant's limited and aged use of marijuana.

Prior to his isolated use of marijuana in September 2010, Applicant had not used marijuana since experimenting with the drug in high school. With so little recurrent history of marijuana use, and with so much time that has elapsed since his last use in 2010 (i.e., almost four years), it is unlikely that he will resume his use of the substance in the foreseeable future.

Applicant is credited with good judgment and reliability by his supervisor who has worked closely with Applicant for a number of years and no longer has any contact with the former co-workers he shared marijuana with while vacationing. Safe predictable judgments, accordingly, can be made about his ability to avoid recurrent drug involvement.

From a whole-person perspective, Applicant has established independent probative evidence of his limited use of marijuana and unlikelihood of ever resuming his use of the substance. He has provided endorsements from his direct supervisor to soften or mitigate any of the drug and judgment concerns associated with his past use of marijuana while holding a security clearance. Applicant's own acknowledgment of poor judgment and disassociation of contacts with the former co-workers with whom he shared marijuana during a vacation in Greece help to reinforce favorable conclusions about his overall judgment, reliability and trustworthiness.

Taking into account all of the facts and circumstances surrounding Applicant's isolated drug use and judgment lapse, Applicant mitigates security concerns related to his drug use. Favorable conclusions warrant with respect to the allegations covered by subparagraph 1.a of Guideline H.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE H: (DRUG INVOLVEMENT): FOR APPLICANT

Sub-para. 1.a: FOR APPLICANT

Conclusions

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge

