



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



In the matter of:)	
)	
)	ISCR Case No. 14-01275
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline Heintzelman, Esquire, Department Counsel
For Applicant: *Pro se*

10/22/2014

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is granted.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on September 23, 2013.¹ The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on May 15, 2014, detailing security concerns under Guideline H, drug involvement. 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 For Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

¹Applicant filed his first security clearance application (SF-86) on August 1, 2001. GE 3.

Applicant received the SOR on May 28, 2014, and he answered it on June 13, 2014. Applicant requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on July 24, 2014, and I received the case assignment on August 19, 2014. DOHA issued a Notice of Hearing on September 8, 2014, and an Amended Notice of Hearing on September 12, 2014. I convened the hearing on the rescheduled date of October 2, 2014. The Government offered four exhibits (GE) marked as GE 1 through GE 4. GE 1 through GE 3 were received and admitted into evidence without objection. Applicant raised concerns about GE 4. As agreed, the Government provided a current copy of this document, which is included in the record. Applicant testified. He offered two documents which were marked as exhibits (AE) A and B, received and admitted into evidence without objection. The record closed on October 2, 2014. DOHA received the hearing transcript (Tr.) on October 15, 2014.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a and 1.b of the SOR. His admissions are incorporated herein as findings of fact. He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 33 years old, works as a data operations satellite engineer, for a DOD contractor. Applicant began working as a contractor for his employer in 2004 and became a full-time employee as of January 1, 2005. Applicant has continued to upgrade and update his skills and is now the only employee who is fully certified on all work-related programs and equipment. His supervisor and his mission director describe him as a dedicated employee upon whom they can rely. He is highly knowledgeable about his work and the company programs. He trains many new workers. Both consider him an asset to his employer and express confidence in Applicant. Applicant has socialized with both outside of work and neither describe any negative conduct by Applicant. His mission director indicates that Applicant is not the person that is being investigated; rather he is honest, trustworthy, loyal and reliable. He is aware of the SOR allegations and believes Applicant's use of marijuana to be an aberration.²

Applicant graduated from high school in 1999 and attended two years of college. He enlisted in the United States Marine Corps Reserves in the summer of 2001. Over the next eight years, he served as an active reservist and on active duty from March 2003 until January 2004. He received an honorable discharge in October 2009.³

Applicant married in May 2004, separated from his wife in 2010 because of her infidelity, and divorced in May 2012. He has two sons, who are nine and eleven years

²GE 1; GE 2; AE A; AE B; Tr. 18-19.

³GE 1; GE 2; Tr. 17-18.

old. He and his former wife share joint custody of his sons. After their separation, Applicant and his former wife filed for bankruptcy because they could not afford to divorce. Their debts were discharged in bankruptcy in May 2011, and their home was foreclosed in December 2011. Applicant now owns a small home and timely pays his bills.⁴

By late 2010, Applicant's life was in chaos, and he was depressed as his "life pretty much fall apart." Because of the stress in his life, Applicant sought a way to relieve his depression. He opted not to consume alcohol because it was a "depressant", and he was already depressed. A neighbor and friend, when he lived in his marital home, suggested he smoke marijuana. In early January 2011, he purchased some marijuana from a dispensary. He smoked two marijuana cigarettes in one week. The drug made him tired and did not change his situation. He decided that he would not again smoke or use marijuana in any form and has not.⁵

Applicant has not used any other illegal drugs since January 2011. He explained his decision not to be involved with illegal drugs at the hearing as follows:

I think part of this whole process, the - - the worrying and the uncontrollable sweating from losing my clearance and possible losing my entire way of life, has shown me that it wasn't worth it, and it - - now knowing that it wasn't something that I, A, enjoyed, and B, remedied my situation. I know that it's not going to fix anything, and I have no desire to do it whatsoever. (Tr. 34)

Applicant moved from his marital home and has not associated with his neighbor since his move. He believes his neighbor moved. He does not know where his neighbor now lives. Applicant's current friends do not use illegal drugs, and Applicant does not associate with anyone who uses illegal drugs.⁶

In his response to the SOR, Applicant signed a statement indicating that he had no intent to use illegal drugs in the future, and that if he did, he agreed to an automatic revocation of his security clearance. He reaffirmed this statement at the hearing.⁷

Applicant has held a security clearance since approximately 2002. He held a security clearance at the time he smoked the marijuana. Applicant knew marijuana was illegal when he smoked it. He explained that he did not think about his clearance when he decided to smoke the marijuana as he was overwhelmed with his life at that time. He considers his conduct a snapshot in time and a lapse in judgment from which he has

⁴GE 1; GE 2; Tr. 17, 29.

⁵GE 1; GE 2; Tr. 19-20, 31-32.

⁶GE 2; Tr. 24-27.

⁷SOR response; Tr. 27.

learned that alcohol or drugs will not fix his problems or make them go away. He must face his problems and take care of them. Smoking marijuana is not who he is. He now handles his stress in life by running or biking, which he describes as a way to clear his head and feel better about himself.⁸

The Government learned about Applicant's use of marijuana when he reported it on his 2013 e-QIP. He did not report his marijuana use to his superiors in 2011 because he was "fearful" he could lose his job if he reported it. He had been reprimanded at work for his performance, which had been effected by his personal problems. He reported his use of marijuana because he did not want to lie on his e-QIP.⁹

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied in conjunction with the factors listed in 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, an applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." An applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

⁸Tr. 20-24, 32-33.

⁹Tr. 29-20.

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 an 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 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.

(a) Drugs are defined as mood and behavior altering substances, and include:

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and

(2) inhalants and other similar substances;

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying:

(a) any drug abuse (see above definition);

(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 twice smoked marijuana in 2011 while he held a security clearance. He purchased the marijuana from a dispensary, and he possessed it. AG ¶¶ 25(a), 25(c), and 25(g) are raised.

AG ¶ 26 provides conditions that could mitigate security concerns:

(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; and,

(4) a signed statement of intent with automatic revocation of clearance for any violation.

Almost four years ago, Applicant smoked marijuana twice in one week during a period of high stress. He sought to relieve his stress and to fix his problems. He realized that the marijuana did not resolve his problems, and he did not like its effect. He actively chose not to smoke marijuana again and has signed a sworn statement not to use marijuana in the future. He has not used any other illegal drug. Applicant moved from the neighborhood where he resided during his marriage and where he smoked the marijuana. He no longer associates with the neighbor who suggested he smoke the marijuana, and his current friends do not use marijuana. His experiment with marijuana in January 2011 does not reflect on his current reliability, trustworthiness or good judgment.

At the time he smoked the marijuana, he held a security clearance. His decision to smoke marijuana, an illegal drug, betrayed the trust the Government had placed in him. This betrayal of trust is an important negative against Applicant. Applicant fully understands the problems he created for himself by his lapse of judgment. He has learned that the use of any illegal drug will not solve his problems and actually creates more problems for him. He has developed new ways to manage his stress, which he has used during the last year as he moved through his security review process. In weighing the entirety of Applicant's conduct, I find that his change in behavior to manage his stress and his decision to remain drug free weigh heavily in his favor as it reflects good judgment, reliability and trustworthiness. Applicant has mitigated the security concerns of the Government.

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 an 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. The infidelity of Applicant's wife in 2010 caused his life to spiral downward and resulting in divorce, bankruptcy, and foreclosure of his home. During the early stages of this abrupt change in his life, Applicant made a bad decision to smoke marijuana on two occasions. He did not like the effects of the marijuana, and he realized that it would not solve his problems. He made an immediate decision not to smoke marijuana again and continues to abide by that decision. Since January 2011, Applicant has learned to manage his stress in new ways and shown maturity in his approach to his problems. Applicant was forthright and honest about his conduct at the hearing and about his intent not to use marijuana in the future. He placed the Government on notice of his marijuana use when he self-reported his use on his 2013 e-QIP. He has demonstrated that he is trustworthy, dependable and reliable.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his experimental use of marijuana under Guideline H.

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant

Conclusion

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

MARY E. HENRY
Administrative Judge