



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



In the matter of:)
)
) ISCR Case: 14-01500
)
)
Applicant for Security Clearance)

Appearances

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

02/23/2015

Decision

DAM, Shari, Administrative Judge:

Applicant illegally used and purchased marijuana from 2005 to 2013, and tested positive for illegal substances twice during that time period. He failed to rebut or mitigate the Government’s security concerns raised under Guideline H, Drug Involvement. His eligibility for a security clearance is denied.

On January 7, 2014, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On June 17, 2014, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under the guideline for Drug Involvement. 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 implemented by the Department of Defense (DOD) on September 1, 2006.

On July 21, 2014, Applicant answered (AR) the SOR in writing and requested a hearing before an administrative judge. DOHA assigned the case to another

administrative judge on November 10, 2014, and reassigned it to me on November 17, 2014. DOHA issued a Notice of Video Teleconference Hearing on December 6, 2014, scheduling the hearing for December 18, 2014.¹ The hearing convened as scheduled. Department Counsel and I were located in Arlington Heights, Illinois, and Applicant was located at the JRB Elmendorf-Richardson, Alaska. Department Counsel offered Government Exhibit (GE) 1, which was admitted without objection. Applicant testified and offered Applicant Exhibits (AE) A through E, which were admitted without objection. DOHA received the hearing transcript (Tr.) on January 2, 2015.

Findings of Fact

In his AR, Applicant admitted the three allegations contained in the SOR. His admissions are incorporated into the findings herein.

Applicant is 31 years old and not married. He obtained a General Education Development (GED) in December 2002. From April 2003 to September 2005, he worked part time for a federal contractor and held a confidential security clearance. (Tr. 13.) In September 2005 he started welding school and graduated with a certificate in January 2006. After starting school, he began purchasing and using marijuana illegally in October 2005. (Tr. 20.) He was 22 years old. From January 2006 to May 2006, he worked as a laborer for the Federal Government. In May 2006 he began an apprenticeship as a boilermaker. Between May 2006 and August 2006, he failed a random drug screening test and was suspended from work. (Tr. 18-19.) He was subsequently unemployed for a couple months. (Tr. 22; GE 1.)

In December 2006 Applicant obtained a position with another federal contractor, working as a welder for an outdoor recreation agency. In August 2012 he failed a random drug screening test and lost his position. He applied for some level of a security clearance while with the agency, but does not know if he obtained one at the time or if it has lapsed. (Tr. 19, 28.) In September 2013 he started his current position with a federal contractor working as a mechanic. He passed the entrance drug screening test. (Tr. 22.)

Applicant began using and purchasing marijuana illegally in October 2005 at the age of 22. (Tr. 16.) He purchased it every two weeks and at times used it on a daily basis after work. (Tr. 17; GE.) He used or purchased it up to August 2013 when he again tested positive for illegal substances.

¹ On November 24, 2014, Department Counsel notified Applicant that I intended to schedule his personal appearance for the week of December 15, 2014, and asked him if he had access to a specific Air Force Base. On December 1, 2014, Applicant responded to Department Counsel's inquiry with questions and his phone number. On December 5, 2014, a Notice of the December 18, 2014 Video Teleconference Hearing was emailed to him and sent by regular mail. On December 15, 2014, he submitted exhibits to Department Counsel in preparation for the hearing. (HE 1) He did not request additional time to prepare before or after the hearing. Applicant received sufficient notice to comply with the DOD Directive's 15-day notice policy set forth in ¶ E3.1.8.

After failing the drug test in August 2013, Applicant's employer required him to participate in a substance abuse evaluation. After the two-hour assessment, the evaluator told him he did not have a substance abuse problem. (Tr. 26, 30-31; GE 1.) He does not intend to purchase or use marijuana in the future. He has changed his surroundings. (Tr. 26.) While testifying, he said he has not been around anyone using illegal drugs nor has he been offered illegal substances since August 2013. (Tr. 25.) He submitted a negative drug screening from October 2, 2014, which he had taken during a routine physical. It was not a random drug test. (Tr. 26-27; AE B.)

Applicant honestly and candidly disclosed his history of illegal substance abuse in the e-QIP and during his testimony. He expressed sincere regret and remorse over his past conduct. He has since matured and changed his life. He wants "something better in my life than a burnout." (AR.) He submitted a letter of recommendation from his employer for whom he has worked for 15 months. The employer wrote that he finds Applicant's "attributes demonstrate someone with exceptional character and that is the reason for this letter. Of my employees, I consider [Applicant] to be one of my most conscientious workers." (AE A.) He strongly supports Applicant's request for a security clearance. (AE A.)

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 (AG) 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(a), describing 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 "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of national security."

Directive ¶ E3.1.14 requires the Government to 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 the applicant or proven by Department Counsel and 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 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.”

Analysis

Guideline H, Drug Involvement

AG ¶ 24 sets forth the security concerns 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 three conditions that could raise a security concern and may be disqualifying under the facts of this case:

- (a) any drug abuse (see above definition); and
- (b) testing positive for illegal drug use.

Applicant admitted that he purchased illegal substances from October 2005 to August 2013. He tested positive for illegal drug use in 2006 and August 2013. AG ¶¶ 25(a) and (b) apply.

After the Government raised potential disqualifying conditions, the burden shifted to Applicant to rebut or prove mitigation of the resulting security concerns. AG ¶ 26

includes examples of conditions that could mitigate the security concerns arising from illegal drug use:

- (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;
- (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;
 - (4) a signed statement of intent with automatic revocation of clearance for any violation;
- (c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and
- (d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Applicant began using marijuana illegally in October 2005, at the age of 22. He continued using it until August 2013. Because Applicant engaged in the illegal activity for about eight years and on a regular basis at times, his behavior raises questions about his judgment. AG ¶ 26(a) has no application.

There is some evidence to support the application of AG ¶¶ 26(b) (1) and (2) to the above disqualifying conditions. Applicant said that since August 2013 he changed his environment where illegal drugs were used and that his friends no longer smoke marijuana around him. AG ¶ 26(b)(3) has no application, as Applicant stated that he stopped using marijuana about 15 months ago, which is not a sufficient period of time given his long-term use of it. There is no evidence to support the application of AG ¶ 26(b)(4), AG ¶ 26(c), or AG ¶ 26(d) which requires evidence of participation in a substance abuse treatment program.

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

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.

SHARI DAM
Administrative Judge