



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-01722

Appearances

For Government: Richard Stevens, Esq., Department Counsel

For Applicant: *Pro se*

05/20/2015

Decision

RIVERA, Juan J., Administrative Judge:

Applicant illegally purchased and used drugs with varying frequency from 2007 to 2013. Considering the period, frequency, his recent use, and the type of drugs he experimented with, Applicant's evidence is insufficient to mitigate the drug involvement security concerns. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on July 8, 2013. On June 10, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline H (drug involvement).¹ Applicant answered the SOR and elected to have his case decided without a hearing.

¹ 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* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

A copy of the Government's file of relevant material (FORM), dated October 30, 2014, was mailed to him on October 31, 2014. Applicant acknowledged receipt of the FORM on December 4, 2014. He was allowed 30 days to submit any objections to the FORM and to provide material in extenuation and mitigation. Applicant did not submit any information within the period of 30 days after his receipt of the FORM.

Findings of Fact

Applicant admitted all of the factual allegations in the SOR, with comments in extenuation and mitigation. His admissions are incorporated as findings of fact. After a thorough review of the record evidence, including his July 2013 SCA, his answers to the SOR, and the summary of his July 2013 interview, I make the following findings of fact:

Applicant is 26 years old. He received his bachelor's degree in May 2011, and was pursuing a post-graduate degree. He was hired by a government contractor in May 2013, under a college-work internship program. This is his first security clearance application. He has never been married, and he has no children. He has been living with his girlfriend since August 2011.

Applicant disclosed in his July 2013 SCA, and admitted in a July 2013 interview and in his answer to the SOR, that he has a recent history of illegal drug purchases and use, which include: marijuana (approximately once monthly from June 2007 to February 2013; hallucinogenic mushrooms (five times from March 2007 to June 2010); ecstasy (once in November 2009); LSD (two times in October 2010 and August 2012); and cocaine (once in 2009).

Applicant explained in his July 2013 SCA that his illegal marijuana use was

occasional over the last year, but then quit recently with the expectation of fulfilling a better lifestyle. My life and lifestyle no longer supports indulging in a controlled substance. I have been working on a cleaner more sober and legal future without the use of drugs or being involved in group scenarios that might present drugs. I have reinforced this by discontinuing associations with those that pose a risk or concern to obtaining or being in the proximity of this illicit drug.

Applicant used marijuana with his live-in girlfriend. (FORM, Item 7) He claimed his use of the other illegal drugs (mushrooms, ecstasy, LSD, and cocaine) was experimental, and that he did not intend to use them again. He purchased the illegal drugs for his personal use, and not for profit. Applicant stated that he voluntarily sought help in January 2013, to quit his involvement with drugs and to eradicate his urge to use or experiment any further. As of his July 2013 interview, Applicant was still undergoing drug and alcohol substance abuse counseling every other week through a college substance abuse program. He claimed he had not received a diagnosis.

In his July 2014 response to the SOR, Applicant noted that he voluntarily sought help to stop his illegal use of drugs, participated in substance abuse treatment for a period of not less than a year, ceased contact with all parties known to continually use drugs, and has been clean for 16 months.

Policies

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Guideline H, Drug Involvement

AG ¶ 24 articulates 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.

Applicant illegally purchased and used drugs (marijuana, mushrooms, ecstasy, LSD, and cocaine) with varying frequency, from around June 2007 to February 2013.

AG ¶ 25 describes two conditions related to drug involvement that could raise a security concern and are disqualifying in this case:

- (a) any drug abuse; and
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

AG ¶ 26 provides three potentially applicable drug involvement mitigating conditions:

- (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 . . . ; 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.

None of the Guideline H mitigating conditions fully apply. Applicant's most recent illegal drug-related behavior occurred in February 2013, shortly before submitting his 2013 SCA. Thus, his drug-related behavior is not recent. Applicant claimed that his marijuana use was occasional, and that he only experimented with the other illegal

drugs once or twice. Nevertheless, he illegally used drugs recurrently from 2007 to February 2013.

Applicant presented no documentary evidence to show that he successfully completed his substance abuse counseling, or that he has continued his rehabilitation by participating in aftercare treatment. There is no record of any diagnosis or prognosis resulting from his substance abuse counseling. Applicant claimed that he disassociated from his drug-using friends. However, he is living with his girlfriend and they used marijuana together.

Applicant illegally used drugs over a long period. Considering the frequency of his use, the type of drugs he experimented with, and his recent use, Applicant's favorable evidence is insufficient to mitigate the drug involvement security concerns.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. (AG ¶ 2(c)) I have incorporated my comments under Guideline H in my whole-person analysis.

Applicant is a 26-year-old graduate student working on an intern program with a defense contractor. He receives credit for disclosing his past illegal drug use in his 2013 SCA. He appears to have taken the first steps to overcome his past illegal drug use.

Notwithstanding, his favorable evidence is insufficient to show that he has been successfully rehabilitated and that his illegal drug abuse is unlikely to recur. His past illegal drug abuse continues to raise questions about his reliability, trustworthiness, judgment, ability to comply with the law, and his ability to protect classified information. He failed to mitigate the Guideline H security concerns.

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:	AGAINST APPLICANT
Subparagraphs 1.a - 1.e:	Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance is denied.

JUAN J. RIVERA
Administrative Judge