



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



In the matter of:)
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-----) ISCR Case No. 14-01803
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)
Applicant for Security Clearance)

Appearances

For Government: Stephanie Hess, Esq., Department Counsel
For Applicant: Richard L. Morris, Esq.

05/15/2015

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant did not mitigate the security concerns regarding his use of drugs. Eligibility for access to classified information is denied.

History of Case

On June 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 August 15, 2014, and requested a hearing. The case was assigned to me on February 5, 2015, and was scheduled for hearing on March 25, 2015. At hearing, the Government's case consisted of one exhibit (GE 1).

Applicant relied on five witnesses (including himself) and 16 exhibits (AEs A-P). The transcript (Tr.) was received on April 7, 2015.

Summary of Pleadings

Under Guideline H, Applicant allegedly (a) used marijuana between May 2004 and July 2013 on multiple occasions; (b) used psilocybin mushrooms between April 2009 and November 2012 on multiple occasions; (c) sold marijuana on multiple occasions from about September 2009 to at least January 2010; and (d) was arrested and charged for underage possession of alcohol and marijuana in September 2009 (charges dismissed). No further details are provided.

In his response to the SOR, Applicant admitted to using marijuana between 2008 and July 2013 to relieve anxiety and insomnia; admitted to using psilocybin mushrooms on three occasions between April 2009 and November 2012; admitted to selling marijuana from September 2009 to January 2010 for sharing purposes and not for profit; and admitted to being arrested and charged in September 2009 for underage possession of alcohol and marijuana (charges dismissed). But he denied using marijuana before 2008. Applicant claimed he immigrated to the United States from Bolivia to further his education. He claimed he earned a degree in mechanical engineering from a recognized university and volunteered his time in college to serve his community. He claimed he is an active member of an American engineering society, which has offered him many beneficial opportunities in the field of engineering.

Applicant further claimed to have grown and matured since he started college, after falling to peer pressure in his use of alcohol and marijuana. And he claimed he has abstained from illegal substances since June 2013 and ended all previous friendships and associations with individuals who use those substances.

Findings of Fact

Applicant is a 25-year-old junior 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 has never been married and has no children. He earned a bachelor of science degree in mechanical engineering in August 2013 from an accredited university (GE 1) While in college, he volunteered numerous hours of his time during the 2012 school year for service in a local soup kitchen. (AE C; Tr. 62-64, 75) He claims no military service. He maintains active membership in recognized engineering societies. (AEs D-E)

Drug history

Applicant was a frequent user of marijuana in high school and throughout his five years of college. (GE 1; Tr. 66, 81-88) His frequency of use varied from daily to weekly

between 2008 and 2012, and from weekly to bi-weekly between 2012 and June or July of 2013. In the security clearance application (e-QIP) he completed in October 2013, Applicant confirmed he used marijuana frequently between 2004 and 2013. (GE 1) He indicated "he smoked marijuana with friends casually in college and end of high school," and "rarely smoke ever now, maybe once every 2-3 months." (GE 1; Tr. 66) Expanding on his marijuana use in college, he indicated he "was a frequent user, almost daily." (GE 1)

When asked about his historical use of marijuana at hearing, Applicant corrected the inclusive dates he listed in e-QIP to run from 2008 through June 2013. (Tr. 66, 80-82) He confirmed his weekly use between 2008 and late 2012 (mostly during the school year to cope with the stress of school) before cutting back to bi-weekly use between late 2012 and June 2013. (Tr. 81-82)

Applicant's date and frequency corrections are plausible ones that correspond with his acknowledged use during his last year in high school and throughout his college years. There is no other probative evidence in the record to challenge Applicant's date corrections from the information he previously provided in his e-QIP. Accordingly, his revised estimates of use are accepted.

During his inclusive dates of marijuana use, Applicant estimated he used the substance no more than 50 times in all. (Tr. 81) This figure is difficult to reconcile with his confirmed weekly use of marijuana between 2008 and late 2012, and bi-weekly between late 2012 and June 2013. Best educated estimates place Applicant's range of use between 200 and 250 occasions of use between 2008 and June 2013, based on his accepted weekly and bi-weekly estimates.

On a few occasions in 2009 and 2010, Applicant sold marijuana to friends to acquire a little cash to enable him to break even in his purchases. (GE 1; Tr. 67-68, 77-78) Between April 2009 and November 2012, Applicant experimented with psilocybin mushrooms on several occasions. (Tr. 66-67, 75) He did not like them and ceased using them. (Tr. 67)

In September 2009, Applicant was arrested for underage possession of alcohol and marijuana while attending a house party. (GE 1; Tr. 67-69) Because he had a pipe in his possession, police added a paraphernalia charge to their list of charges. (Tr. 69, 82) The charges were ultimately dismissed.

Since his graduation from college in August 2013, Applicant has abstained from using illegal drugs and severed his contacts with his old friends. (Tr. 70-71, 82) He cited his increased maturity and career advancement goals as his reasons for ceasing his marijuana activity. (Tr. 70-71) Both his direct supervisor and close friends corroborated his assurances of marijuana abstinence since completing his college studies. Applicant's assurances of sustained abstinence of illegal drugs since June 2013 are accepted.

In an affidavit executed in March 2015, Applicant swore and affirmed that he will never wrongfully possess, distribute, or abuse drugs, be in possession of drug abuse

paraphernalia, or be under the influence of unauthorized drugs or medication, and that he will fully abide by all regulations and laws. (AE A; Tr. 71) He further swore and affirmed that he will accept automatic revocation of his security clearance for any violation of knowingly using an illegal substance of drug. (AE A; Tr. 71) Applicant's sworn statements of intention are accepted.

Endorsements

Applicant is well-regarded by his direct supervisor, who hired him two years previous and interfaces with him daily. (Tr. 41-43) He characterized Applicant's work performance as excellent, and extolled his reliability, integrity, and trustworthiness as superb. (Tr. 43-45) His supervisor credited Applicant with responsible work and personal habits. (Tr. 46-47)

Close friends who roomed with Applicant found him to be totally trustworthy and reliable and never saw him use illegal drugs. (Tr. 24-30, 34-37) They described Applicant as being more focused on his life since graduating from college and entering the professional world, and credited hm with demonstrated good character. (Tr. 26-28, 37)

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 chances; (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 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

Applicant used illegal drugs in high school and college. While he experimented with psilocybin mushrooms on several occasions, most of his illegal drug use consisted of marijuana. On a few occasions, he sold marijuana to friends to enable him to break even with his own purchases, but not for profit.

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,” and DC ¶ 25(c), “illegal possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.” Judgment concerns exist over Applicant’s past drug use. He has less than two years of demonstrated abstinence since his last proven use in June 2013.

Considering the frequency of Applicant’s marijuana use over an extended number of years and the limited number of years of demonstrated abstinence, his time devoted to sustained abstinence from illegal drugs becomes an important factor. It is a factor that must be weighed along with Applicant’s received commitments to avoid illegal drugs in the future, his disassociation from persons who used drugs, and his recognized maturity in determining whether sufficient 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(b), “a demonstrated intent not to use any drugs in the future, such as (1) disassociation from drug-using associates and contacts, (3) an appropriate period of abstinence, and (4) a signed statement of intent with automatic revocation of clearance for any violation,” apply to Applicant’s situation. 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,” has some application to Applicant’s situation as well.

Applicant is credited with good judgment and reliability by his supervisor who has worked closely with Applicant and by his close friends who have roomed with Applicant. He has shown considerable maturity since he entered the professional world and is committed to abstaining from any and all involvement with illegal drugs. Applicant has a promising future with his employer and shows considerable commitment to disassociating himself from contacts who use illegal drugs and avoiding illegal drugs himself.

Still, too little time has elapsed since his last use of marijuana in June 2013 (less than two years). Because his marijuana use was so frequent and prolonged over a six-year period, more time is needed to facilitate safe predictable judgments about Applicant’s ability to avoid recurrent drug involvement.

From a whole-person perspective, Applicant’s endorsements from his direct supervisor and close friends who know him well and have observed his professional development help to soften or mitigate any of the drug and judgment concerns associated with his past use of marijuana. Applicant’s own acknowledgment of poor judgment and disassociation of contacts with persons who used illegal drugs is

encouraging. Positive whole-person assessments are not enough, though, to mitigate security concerns over his extended use of marijuana in high school and college. More demonstrated time in abstinence is needed to absolve Applicant of security concerns and facilitate safe predictions that he will not return to illegal drug use in the foreseeable future.

Taking into account all of the facts and circumstances surrounding Applicant's frequent drug use over an extended period of time, security concerns over his drug involvement are not mitigated. While his use of psilocybin mushrooms was very limited (only three occasions), he used this drug contemporaneously with his use of marijuana. Under these circumstances, his use of psilocybin mushrooms cannot be fully isolated from his marijuana use when assessing recurrence risks. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a-1.d 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): AGAINST APPLICANT

Sub-para. 1.a-1.d: Against Applicant

Conclusions

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

Roger C. Wesley
Administrative Judge

