



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



In the matter of:)
)
) ISCR Case No. 14-01952
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: Michael Jones, Esq.

December 11, 2014

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant mitigated the Drug Involvement security concerns that arose out of his infrequent recreational drug use from 1990 to May 2012. Eligibility for access to classified information is granted.

Statement of the Case

On January 4, 2013, Applicant submitted an Electronic Questionnaires for Investigative Processing (e-QIP). On July 3, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H, Drug Involvement. The action was taken under Executive Order (EO) 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 (AG) effective after September 1, 2006.

Applicant responded to the SOR (Answer) on August 5, 2014 and requested a hearing before an administrative judge. The case was assigned to another administrative judge on September 25, 2014, and then reassigned to me on October 20, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 20, 2014, and the hearing was convened as scheduled on November 3, 2014. The Government offered Hearing Exhibit (HE) I and Exhibit (GE) 1, which was admitted without objection. Applicant offered Exhibits (AE) A and B, which were admitted without objection. Applicant testified on his own behalf and called one witness. The record was left open for the receipt of additional documentation. On November 18, 2014, Applicant presented 17 pages of additional documentation. His post-hearing exhibits were marked AE C through K. Department Counsel had no objections to AE C through K and they were admitted. The record then closed. DOHA received the hearing transcript (Tr.) on November 13, 2014.

Findings of Fact

Applicant is a 47-year-old employee of a government contractor. He also owns an independent small business. He lives with his fiancée and her three minor children. (GE 1; Tr. 25-26, 54, 58.)

The SOR alleged that between September 1990 until approximately May 2012, Applicant used marijuana. Applicant admitted his marijuana use on his e-QIP, in his Answer, and during his testimony. (GE 1; Answer.)

Applicant's marijuana use was recreational in nature and occurred infrequently between September 1990 and May 2012. The frequency of use ranged between a couple times per year to a couple times per month, at parties and social gatherings. He did not go to parties with the intent of using marijuana, but would partake if it was offered to him. He never purchased it. (GE 1; AE K; Tr. 27-32, 44-48.)

In May 2012 he recognized the poor judgment of his past illegal drug use. He testified that he was sincerely remorseful for breaking the law and understood the gravity of his past actions. He has worked diligently to change his life significantly in the past few years. In 2012 he consciously decided he no longer wanted to use marijuana. He decided he wanted to focus on building his career. He moved to another city and discontinued associating with drug users. He no longer attends social gatherings where marijuana is used. He met his fiancée and they became engaged in summer 2014. He now provides for her three children and feels a responsibility to be a good role model for them. He also applied for and received a job with his current employer. Although this is his first job that has required a security clearance, he stopped using marijuana even before he decided to apply for it. He is now a dedicated professional. (AE D; Tr. 28-29, 32-48, 56-61.)

Applicant testified that he has put his marijuana use behind him. He submitted a signed statement of intent not to use marijuana in the future. He testified that he has successfully abstained from using marijuana for more than two years. He submitted

negative drug test results as further proof that he is no longer using marijuana. (AE C; AE D; Tr. 28-29, 32-48, 56-61.)

Applicant is well respected by those who know him, as verified by the letters he entered into evidence. He is known in his community as a successful small business owner who is actively involved in community outreach. His friends and colleagues consider him to be reliable and trustworthy. His 2014 performance review reflects he is a valued employee. (AE E; AE F; AE G; AE H; AE I; AE J; Tr. 67-71.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 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 "[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, the 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." The applicant has the ultimate burden of persuasion to obtain 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 the 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 EO 10865 provides that adverse 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.

I have considered all of the disqualifying conditions under Drug Involvement AG ¶ 25, and the following are potentially applicable:

(a) any drug abuse; and

(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

The Government presented sufficient information to support all of the factual allegations under Guideline H (SOR ¶ 1.a). Applicant used marijuana, infrequently from 1990 to May 2012. The facts established through the Government’s evidence and through Applicant’s admissions raise security concerns under both of the above disqualifying conditions.

I have considered the mitigating conditions under Drug Involvement AG ¶ 26, and the following are potentially applicable:

(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.

Applicant has demonstrated sufficient intent not to use any illegal drugs in the future. While Department Counsel argued that two years of abstinence are not significant, given his long history of marijuana use over a 22-year period, Applicant has made a number of significant changes in his life during those two years that demonstrate his serious commitment to abstinence from marijuana. He recognized that

he was wrong to use marijuana. He ceased using it prior to applying for his current position. He has disassociated from drug-using friends. He moved to another city and no longer attends parties with drug users. He is engaged to be married and is now a role model for his fiancée's three children. He is a successful business owner and professional, and surrounds himself with like-minded professional acquaintances that do not use illegal substances. Thus, he has changed his environment. Moreover, he has abstained from the use of illegal substances for more than two years. He signed a statement of intent with automatic revocation of clearance for any violation. Applicant's current reputation for honesty and trustworthy behavior, coupled with his candor concerning his past drug use, add weight to his commitment to abstain from illegal drug use. Applicant has presented sufficient evidence to mitigate the Government's concerns under AG ¶ 26(b).

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 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.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant's infrequent but illegal drug use occurred over a long span. He was irresponsible at the time and did not recognize the seriousness of his actions. He has now matured. He has not used illegal substances for more than two years after coming to the revelation that there was no room for illegal substances in his future professional life. His changes are permanent and the likelihood of recurrence is extremely low. Applicant is highly respected by those who know him. He has a reputation for honesty and trustworthiness. He successfully passed a urinalysis test. 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 should be granted a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H: FOR APPLICANT

Subparagraphs 1.a: 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.

Jennifer I. Goldstein
Administrative Judge