



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



In the matter of:)	
)	
)	ISCR Case No. 14-02151
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

03/06/2015

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s history of drug-related criminal conduct, in particular, his use of cocaine after he started working for his employer, continues to raise security concerns. His lack of judgment and unwillingness to comply with the law raise questions about his reliability, trustworthiness, and ability to protect classified information. Clearance denied.

Statement of the Case

Applicant submitted his first security clearance application (SCA) on January 28, 2014. The Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline H (drug involvement) on July 14, 2014.¹ Applicant answered the SOR (undated), and requested a hearing before an administrative judge. The case was assigned to me on November 6, 2014. The Defense Office of Hearings and Appeals (DOHA) issued the notice of hearing on November 13, 2014, scheduling a hearing for December 11, 2014.

¹ The DOD acted 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.

At the hearing, the Government offered two exhibits (GE 1 and 2). GE 1 was admitted without objection. GE 2 was marked and made part of the record, but it was not admitted into evidence. Applicant testified and submitted no exhibits. DOHA received the hearing transcript (Tr.) on December 22, 2014.

Findings of Fact

Applicant admitted all the SOR allegations, with explanations. His admissions are incorporated as findings of fact. After a thorough review of all the evidence, including his testimony and demeanor while testifying, I make the following additional findings of fact:

Applicant is a 23-year-old employee of a defense contractor. He attended college from September 2009 until May 2013, and received a bachelor's degree in business. He is currently pursuing a master's degree in business administration. He has never been married and has no children.

Applicant started a summer job with his current employer in June 2012. While working as an intern, he was hired as a part-time employee, and in December 2012, he was offered a full-time position. He started working full time for his employer in June 2013. When Applicant was in processing in June 2013, he was advised of his employer's strict policy against the use of illegal drugs by its employees, and he was required to take a urinalysis to test for the presence of drugs.

When Applicant submitted his SCA in January 2014, he was candid and forthcoming completing his SCA and disclosed his prior history of illegal drug use. Applicant disclosed that he illegally used marijuana between March 2008 and August 2010. He started to use marijuana in high school and his use continued into college. He characterized his use of marijuana as infrequent, and estimated he used marijuana a total of 10 times. He explained that he experimented with marijuana socially, at parties with friends, and because of peer pressure.

Applicant testified that he stopped using marijuana because he did not want the use of marijuana to be a part of his life. He saw other people use illegal drugs frequently and they developed problems. He did not want to follow that path. Notwithstanding, he used other illegal drugs after he stopped using marijuana.

Applicant used Adderall without a prescription between February 2012 and June 2013. He obtained the Adderall from friends who had a prescription. He used the Adderall to stay awake after a day of drinking.

Applicant illegally used cocaine between January 2013 and November 2013. He started to experiment with cocaine while in his last year of college. He used cocaine socially, at parties with friends, and because of peer pressure. He characterized his use of cocaine as infrequent, and estimated he used cocaine a total of 10 times. He also contributed money for the purchase of cocaine approximately five times. His last use of

cocaine was in November 2013, while vacationing with two friends. He used cocaine approximately five months after he started working for his employer.

Applicant repeatedly expressed regret for his illegal drug use. He knew that the use of drugs was illegal. He attributed his criminal behavior to his young age, lack of maturity, and the bad influence of some of his college friends. He considers his illegal drug use as a stupid mistake. Applicant averred that he has matured and now understands the seriousness of his actions. He promised never to use illegal drugs again. He expressed his willingness to submit a statement of intent with automatic revocation of clearance for any violation to show his resolution to not abuse any drugs in the future. However, he did not submit the signed statement of intent.

Applicant claimed he no longer associates with his marijuana and cocaine-using friends. After college the relationships fell apart and they are no longer in contact. They now have different jobs and interests. Applicant avoids the environments where illegal drugs are used. He still associates with some of his Adderall-using friends. He sees them occasionally at the gym and other activities. He no longer associates with them on a daily or weekly basis. Applicant testified that he has not used any illegal drugs since November 2013.

Applicant highlighted his high college GPA, his participation in college sports, his performance, and his current pursuit of a master's degree as factors that show his rehabilitation, current maturity, commitment, and good judgment. Additionally, he noted that he was candid and honest in his 2014 SCA because he wanted to bring his past drug-related behavior into the open. He wants to have a fresh start and leave his past lapses in judgment behind.

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.

Between March 2008 and November 2013, Applicant illegally used drugs (marijuana, cocaine, and Adderall without a prescription). He illegally used drugs knowing it constituted a criminal offense to do so. He used cocaine after he was hired by his current employer, knowing his employer had a strict policy against it.

AG ¶ 25 describes conditions related to drug involvement that could raise a security concern and are applicable 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 two 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; 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;

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

I find that none of the Guideline H mitigating conditions fully apply. Applicant's most recent cocaine use occurred in November 2013. As such, his illegal drug-related behavior is recent. Applicant illegally used cocaine after he started working for his employer and with full knowledge of his employer's strict policy against illegal drug use. He illegally used multiple drugs during a five-year period. Thus, his use was frequent and happened under ordinary circumstances.

I considered Applicant's age and maturity at the time of the offenses. I also considered his efforts to rehabilitate himself, to show he has matured, and that he is unlikely to engage in similar misconduct. I also gave Applicant credit for being truthful and candid in his 2014 SCA. On balance, I find that not enough time has transpired since Applicant's last use of cocaine to fully establish Applicant's rehabilitation and that his illegal drug use is not likely to recur. At his time, his illegal drug use continues to cast doubt on his current reliability, trustworthiness, judgment, and his ability to comply with the law, rules and regulations.

Applicant promised to never use illegal drugs in the future. Applicant was aware of the criminal prohibition against the illegal use of drugs, and of the adverse consequences to his ability to hold his job if he illegally used drugs. That did not stop him from using cocaine. Applicant's illegal drug use is a violation of the trust placed in him by the employer.

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).

Applicant is a 23-year-old employee of a government contractor. His history of drug-related criminal conduct, in particular his use of cocaine after he was hired by his employer, continues to raise security concerns. Considering the evidence as a whole, Applicant's lack of judgment and unwillingness to comply with the law raise questions about his reliability, trustworthiness, and ability to protect classified information.

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.d:	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 denied.

JUAN J. RIVERA
Administrative Judge