



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 14-02491 |
| |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Robert J. Kilmartin, Esquire, Department Counsel
For Applicant: *Pro Se*, Esquire

April 23, 2015

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on March 28, 2013. On July 17, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines H and E for Applicant. 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 (AG), effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (Answer) on September 17, 2014, and requested an Administrative Determination by an administrative judge from the Defense Office of Hearings and Appeals. Department Counsel issued a File of Relevant Material (FORM) on January 29, 2015. Applicant did not respond to the FORM. The case was assigned to me on April 14, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in Paragraphs 1.a., 1.b., 2.a., and 2.b. of the SOR, with explanations. He denied the factual allegations in Paragraphs 2.c. and 2.d of the SOR.

Guideline H - Drug Involvement

1.a., 1.b., and 2.a. Applicant was granted a security clearance in “1992/05/04.” (Item 6 at page 20.) In both his March 2013 e-Qip and his followup interview in May of 2013, Applicant admits that he began using marijuana in January of 1980. (Item 4 at page 28, and Item 5 at page 1.) He “smokes half a joint one to two times per week. The drug is provided . . . by his friend. . . . The drug is smoked at either the back patio of . . . [his] house or his friend’s house. The drug is used to help alleviate chronic back pain” (Item 5 at page 1.) In his March 2013 e-Qip, Applicant not only admits that he used marijuana “while possessing a security clearance,” but that he intends to use it in the future. (Item 4 at page 28.) Furthermore, in his September 2014 Answer, Applicant admits that he is “a regular user” of marijuana. (Answer at page 1.)

Guideline E - Personal Conduct

2.c. and 2.d. In answer to Item 20 on his August 1991 National Agency Questionnaire, Applicant averred the following: “I experimented with marijuana from 1976~1979. I smoked mostly at parties. I no longer smoke it and don’t intend to in the future.” (Item 8 at pages 3~4.) I find this to be a wilful falsification, as Applicant used marijuana from 1980~1991. In a followup interview in March of 1992, Applicant averred the following: “I smoked marijuana (MJ) socially with high school friends from approx 1976 to 1979.” (Item 7 at pages 2~3.) Again, I find this to be a wilful falsification, as Applicant used marijuana from 1980~1991.

2.b. Applicant answered “No” to Section 27 on his January 2002 e-Qip, denying any illegal drug use in “the last 7 years.” (Item 6 at page 20.) I find this to be a wilful falsification, as Applicant used marijuana from 1995~2001.

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 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 the adjudicative process. The administrative judge’s over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG Paragraph 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. Paragraph 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive Paragraph E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive Paragraph E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining a favorable security 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 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline H - Drug Involvement

The security concern relating to the guideline for Drug Involvement is set out in Paragraph 24:

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.

The guideline also notes several conditions that could raise security concerns. Under Subparagraph 25(a), “*any drug abuse*” may be disqualifying. In addition, “*illegal . . . purchase*” under Subparagraph 25(c) may be disqualifying. Under Subparagraph 25(g), “*any illegal drug use after being granted a security clearance*” may also be disqualifying. Furthermore, an “*expressed intent to continue illegal drug use*” under

Subparagraph 25(h) may be disqualifying. Here, Applicant has used marijuana for a period of about 34 years, and intends to use it in the future. I can find no countervailing mitigating condition that is applicable here. Guideline H is found against Applicant.

Guideline E - Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in Paragraph 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information.

The guideline notes several conditions that could raise security concerns. Under Subparagraph 16(a), "*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . or similar form*" may be disqualifying. In addition under Subparagraph 16(b), "*deliberately providing false or misleading information concerning relevant facts to an . . . investigator*" may also be disqualifying. Here, Applicant falsified his answers to Item 20 on his August 1991 National Agency Questionnaire, and to Section 27 on his January 2002 e-QIP. He was also less than candid with a Government investigator in March of 1992. I can find no countervailing Mitigating Condition that is applicable here. Guideline E is found against Applicant.

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 the circumstances. Under AG Subparagraph 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.

The Administrative Judge should also consider the nine adjudicative process factors listed at AG Subparagraph 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.

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. He was clearly less than candid with the Government as to his past drug abuse, and

intends to use marijuana in the future. For this reason, I conclude Applicant has not mitigated the security concerns arising from his Drug Involvement and Personal Conduct.

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:

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| Paragraph 1, Guideline H: | Against APPLICANT |
| Subparagraph 1.a: | Against Applicant |
| Subparagraph 1.b: | Against Applicant |
| Paragraph 2, Guideline E: | AGAINST APPLICANT |
| Subparagraph 2.a: | Against Applicant |
| Subparagraph 2.b: | Against Applicant |
| Subparagraph 2.c: | Against Applicant |
| Subparagraph 2.d: | Against Applicant |

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.

Richard A. Cefola
Administrative Judge