



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 14-02531
)
Applicant for Security Clearance)

Appearances

For Government: Pamela Benson, Esquire, Department Counsel

For Applicant: *Pro se*

June 24, 2015

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigation Processing (e-QIP) on March 13, 2013. (Item 4.) On July 15, 2014, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guideline H (Drug Involvement) concerning Applicant. 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 within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on August 11, 2014, and requested a decision by an administrative judge without a hearing. (Item 3.) Department Counsel submitted the Government’s written case (FORM) to Applicant on March 9, 2015. The

FORM contained six documents.¹ Applicant acknowledged receipt of the FORM on March 18, 2015. He was given 30 days from receipt of the FORM to submit any additional documentation. Applicant did not submit any additional information. The case was assigned to me on May 21, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 39, single, and has a bachelor's degree. He is employed by a defense contractor and seeks to retain a security clearance that he has held since 2003 in connection with his employment. (Item 6.) Applicant admitted all the allegations of the SOR, with explanations. Applicant's admissions are incorporated into the following findings of fact.

Paragraph 1 (Guideline H, Drug Involvement)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he used illegal drugs.

The majority of Applicant's drug use occurred in 2004 and 2005. According to Applicant, he was working long hours, twelve to sixteen hour days for six to seven days at a time. This schedule went on for nine months. In his Answer to the SOR he states, "I was overworked and sleep deprived, and as a result, was not fully accessing my rational brain to make good decisions." (Item 3 at 3.)

At that same time he met a "girl" and began hanging out with her. She held parties, at which drugs were used. Applicant eventually began to partake of the drugs, using marijuana about four times, cocaine once, methamphetamine seven times, and opium three times. Applicant states, "I went to a few more of her parties but I eventually decided these parties, the drugs, and she were not conducive to my well being, so I ended contact with all. I do not have contact with her or anyone else from those parties and have not had contact with them since that timeframe." (Item 3 at 3.)

Applicant's last use of any illegal drugs was in 2007, when he was visiting a friend from college who offered him some marijuana. "I have not done or tried any drugs since, nor do I plan to," he states. (Item 3 at 3.)

Applicant was fully forthcoming on his e-QIP of March 13, 2013, concerning the extent of his drug use. (Item 4 at Section 23.)

¹Item 5 is inadmissible and will not be considered or cited as evidence in this case. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on April 1, 2013. It was never adopted by Applicant as his own statement, or otherwise certified by him to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of an authenticating witness. Given Applicant's admission of all of the allegations in the SOR, it is also cumulative.

Section 23 also asks, "Provide explanation of why you intend or do not intend to use this drug or controlled substance in the future." Applicant stated, "I have no use for marijuana or drugs in general in my life. I was curious but there are too many negatives and problems and I don't want to go down that road." (Item 4.)

Policies

Security clearance decisions are not made in a vacuum. When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used as appropriate 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 AG ¶ 2(a) 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, "Any 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 ¶ 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, and has the ultimate burden of persuasion as to obtaining 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination 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

Paragraph 1 (Guideline H - Drug Involvement)

The security concern relating to the guideline for Drug Involvement is set out in AG ¶ 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. Drugs are defined as mood and behavior altering substances, and include: (1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and (2) inhalants and other similar substances; Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

I have considered the disqualifying conditions under AG ¶ 25 and especially considered the following:

- (a) any drug abuse; and
- (g) any illegal drug use after being granted a security clearance.

I have studied all of the mitigating conditions under AG ¶ 26 and especially considered the following:

- (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.

Applicant used marijuana, cocaine, methamphetamine and opium a total of about fifteen time times between 2004 and 2007, when holding a security clearance. Both of the disqualifying conditions have application to this case.

Applicant has, however, overcome the Government's case. His use was infrequent, the most recent use happened eight years ago, and it is very unlikely to recur. He has always been truthful with DoD about his use, and credibly states that he will not use marijuana or other drugs in the future. He no longer associates with the people he used drugs with. Guideline H is found for 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 applicant's conduct and all the relevant circumstances. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Under AG ¶ 2(a)(3), Applicant's conduct is not recent. Based on the state of the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, at the present time, I find that there is little potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)), and that there is also little likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, 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 has mitigated the security concerns arising from his drug use.

On balance, it is concluded that Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

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

Subparagraph 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.

WILFORD H. ROSS
Administrative Judge