



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



In the matter of:)
)
 [NAME REDACTED]) ISCR Case No. 14-02674
)
)
 Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

03/11/2015

Decision

MALONE, Matthew E., Administrative Judge:

Applicant used marijuana sporadically between July 1998 and August 2013. He did not present information sufficient to mitigate the security concerns about his drug use. His request for a security clearance is denied.

Statement of the Case

On January 14, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain a security clearance required for his job with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Department of Defense (DOD) could not determine that it is clearly consistent with the national interest for Applicant to have access to classified information.¹

¹ Required by Executive Order 10865, as amended. See also Directive, Section E3.1.1.

On July 18, 2014, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed at Guideline H (Drug Involvement).² Applicant timely responded to the SOR and requested a decision without a hearing. On October 8, 2014, Department Counsel issued a File of Relevant Material (FORM)³ in support of the SOR. Applicant received the FORM on November 5, 2014, and was notified that he had 30 days to file a response to the FORM. He did not submit additional information, and the record closed on December 5, 2014. The case was assigned to me on February 4, 2015.

Findings of Fact

The Government alleged that Applicant used marijuana “multiple times” between July 1998 and August 2013 (SOR 1.a). Applicant admitted this allegation and provided additional remarks with his response. (FORM, Item 2) In addition to the facts established by Applicant’s admission, I make the following findings of fact.

Applicant is 40 years old and has applied for a security clearance required for employment as a welder at a defense contractor. Applicant’s employment with that contractor is contingent on his qualification for a security clearance. Applicant currently works as a physical therapy assistant. Since being unemployed for about a year, Applicant has been consistently employed in a variety of jobs beginning in December 2004. This is his first application for a clearance.

Applicant used marijuana between 1998 and 2013. His use was sporadic – about two or three times a year – and he did not use marijuana at all from sometime in 2002 until December 2012, when he smoked marijuana at holiday party. Applicant also used marijuana once in January 2013 and once in August 2013. (FORM, Items 2 - 4)

Applicant and his wife have been married since October 2010. They have a three-year-old child together. Applicant stated in his response to the SOR that his use of illegal drugs is in the past and that he has matured to meet the responsibilities of marriage and parenthood. (FORM, Items 2 - 4)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁴ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole-person” concept, those factors are:

² See Directive, Enclosure 2. See also 32 C.F.R. § 154, Appendix H (2006).

³ See Directive, Enclosure 3, Section E3.1.7. The FORM included four documents (Items 1 - 4) proffered in support of the Government’s case.

⁴ Directive, 6.3.

(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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁵ for an applicant to either receive or continue to have access to classified information. Department Counsel must produce sufficient reliable information on which DOHA based its preliminary decision to deny or revoke a security clearance for an applicant. Additionally, Department Counsel must prove controverted facts alleged in the SOR.⁶ If the Department Counsel meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁷

Because no one is entitled to a security clearance, an applicant bears a heavy burden of persuasion to establish that it is clearly consistent with the national interest for the applicant to have access to protected information.⁸ A person who has access to such information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, there is a compelling need to ensure each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the nation's interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of the Government.⁹

Analysis

Drug Involvement

Applicant is 40 years old and he has used marijuana, albeit infrequently, over the past 16 years. This information raises a security concern articulated at AG ¶ 24, as follows:

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶ Directive, E3.1.14.

⁷ Directive, E3.1.15.

⁸ See *Egan*, 484 U.S. at 528, 531.

⁹ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

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.

(a) 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;

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

More specifically, available information requires application of the disqualifying condition at AG ¶ 25(a) (*any drug abuse (see above definition)*).

In response to the Government's information, the following AG ¶ 26 mitigating conditions are available:

(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) dissociation 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 started using marijuana as an adult in 1998. He did not use marijuana at all for about 10 years before using again in December 2012 and January 2013. His last known use was in August 2013. His abstinence since then might be considered sufficient; however, his willingness to use marijuana over such a long period of time, and to repeat that conduct after long periods of abstinence suggests more time is needed to assess Applicant's commitment to refrain from future drug use. Further, Applicant's assertion that he has matured in response to marriage and parenthood is contradicted by the fact he used marijuana at least three times after he married and after his child was born.

All of the foregoing precludes application of either AG ¶ 26(a) or AG ¶ 26(b). Applicant has failed to mitigate the security concerns about his involvement with illegal drugs.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(a). Applicant presents as a hard worker, and he at least recognizes the impact illegal drug involvement might have on his family. Nonetheless, the positive information in his background is not sufficient to overcome the Government's concerns about his drug use. The record as a whole reasonably shows that doubts remain about Applicant's suitability for access to classified information. Because protection of the national interest is the principal goal of these adjudications, those doubts must be resolved against the Applicant.

Formal Findings

Formal findings 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

Subparagraph 1.a: Against Applicant

Conclusion

In light of all available information, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge