



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



In the matter of:)	
)	
)	ISCR Case No. 14-02696
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: Alan Edmunds, Esq.

04/27/2015

Decision

LYNCH, Noreen A, Administrative Judge:

On August 19, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline H (Drug Involvement), and Guideline E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. A notice of hearing was sent on March 11, 2014, scheduling the hearing for April 14, 2015. The Government submitted five exhibits (GX 1-5), which were admitted into the record. Applicant submitted 11 exhibits (B-L), which were admitted into the record.¹ Based on a review of the case file, submissions, and exhibits,

¹Exhibit A for Appellant was not submitted during the hearing.

I find Applicant failed to meet his burden regarding the security concerns raised. Security clearance is denied.

Findings of Fact

In his answer to the SOR, Applicant admitted the factual allegations under Guideline H (Drug Involvement), and denied the two allegations under Guideline E (Personal Conduct).

Applicant is a 33-year-old senior consultant with a defense contractor. He received his undergraduate degree in 2004, and his master's in 2010. (AX F and G) Applicant is married and has one daughter. Applicant has worked in the defense field since 2005. He has worked for his current employer since April 2012. Applicant has held a security clearance since 2005.² (Tr. 47) He completed his most recent security clearance application (SCA) on February 26, 2014.

Drug Involvement

Applicant used marijuana on several occasions between approximately March 2011 and April 2011. During that time, he held a security clearance. Applicant admitted that while he was attending approximately four engagement parties before his wedding he used marijuana. (Tr. 48) He acknowledged that there was "a lot of alcohol involved and it was an error in judgment." (Tr. 66) He noted that the social gatherings left him vulnerable to peer pressure. Applicant stated that the people attending the party were friends of friends and that he does not associate with them. (Tr. 85)

On February 15, and 27, 2015, Applicant submitted to drug screening tests which reported negative drug results. (AX B). Applicant signed a Letter of Intent, dated February 13, 2015, stating that he has no intent to use illegal drugs in the future, and if should there be a violation with regard to illegal drug use, Applicant would consent to an automatic revocation of his security clearance. (AX C)

He also submitted a psychological evaluation. (AX D) The evaluation report, dated February 26, 2015, reflects Applicant's explanation concerning the omission of his 2011 marijuana use. He explained that he had a lot going on and that his wife was pregnant. He was convinced that due to his elevated stress level he did not give the completion of the security application the attention it deserved. Applicant stated that after the birth he was able to focus on the details of the SF 86 and resubmit his questionnaire. Applicant completed an addiction severity index that noted that he has not received any outpatient treatment for any drug or alcohol problems. He has never been arrested for any illegal drug use. This report noted that Applicant minimized and justified his cannabis-using behaviors. (AX E) The report in the record contains four of eight pages.

²On that first application Applicant disclosed some prior drug use that ended in 2001.

Personal Conduct

Applicant completed a security clearance application dated March 25, 2013. In response to Section 23, Illegal Use of Drugs or Drug Activity, Applicant answered "No," to the question asking whether he had illegally used any drugs or controlled substances within the last seven years. He omitted the information concerning the 2011 incidents of marijuana use and the fact that he used illegal drugs while he held a security clearance in another section of the application. (GX 2)Applicant did not disclose the above information about marijuana use when he was interviewed in 2013 in connection with the security application submitted in March 2013.

Applicant submitted another security clearance application for another agency, dated February 26, 2014. In that application Applicant disclosed the use of marijuana in 2011 at dinner parties. He notes that it happened two or three times at engagement parties. He also said that he has no intention of using any illegal drugs in the future because it is not healthy; he does enjoy it; and he does not want to be that kind of influence for his daughter. (GX 1)

In his answer to the SOR, Applicant denied deliberately omitting information because he filled out the paperwork in haste from an older copy of the SF 86. He stated that this made it easy to not pay attention to the details. (Tr. 89) Applicant stated that this was because he had to complete the application by hand. (Tr. 52) He noted that he corrected the mistake in the 2014 SCA.

He continued to omit the same information about illegal drug use in the 2013 interview. When his security clearance application was reviewed in April 2014, it was found that he listed drug use while having access to classified information. (GX 4) The incident report explains that this caused the security office to check Applicant's SCA. Applicant affirmed that he did not report any drug usage on the 2013 SCA. He also did not disclose the information during the 2013 investigation with the interviewer. (GX 4)

When an incident report was filed, Applicant was questioned by the security office. It was then that he admitted he omitted the drug use because he just had a baby and could not sleep. The reasons that Applicant has given for omitting the drug use in 2011 have changed several times. (GX 4)

Applicant did not acknowledge the omission to the Government until he filled out another security application almost a year later. In his 2013 security clearance application, Applicant denied any drug use within the preceding seven year period, and denied drug use while holding a security clearance. He falsified his security clearance application and misled the Government. He was less than candid when he stated that he sent a corrected version to the FSO, when he realized he made a mistake of omission. According to the incident report, the security office reviewed the SCA and then spoke to Applicant.

Applicant's witnesses testified that Applicant is ethical, methodical and professional. (Tr. 18-29) They know about the marijuana use and feel that Applicant is

worthy of a security clearance. (Tr. 22) His team leader stated that Applicant told him that he corrected his mistake of omission, but he had no details. (Tr. 27) One witness testified that Applicant told him recently that “he went back into the system and fixed the error.” (Tr. 23; 27) They have never seen Applicant use illegal drugs.

A third witness who works for another agency has recently worked with Applicant. He was shown the SOR recently and vouches for Applicant’s trustworthiness. He also stated that Applicant can learn from his mistakes. (Tr. 36) He has never seen Applicant use drugs.³

Policies

When evaluating an applicant’s suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” An 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The United States Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”⁴ The burden of proof is something less than a preponderance of evidence.⁵ The ultimate burden of persuasion is on the applicant.⁶

A person seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. This relationship

³There was discussion in the record concerning a “passed” polygraph given by another agency in 2013. I give this assertion little weight as to relevance in this case.

⁴ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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.”⁷ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁸ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁹ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

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.

(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.

⁷ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁸ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁹ *Id.*

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying:

- (a) any drug abuse (see above definition);
- (b) testing positive for illegal drug use;
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;
- (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence;
- (e) evaluation of drug abuse or drug dependence by a licensed clinical social worker who, is a staff member of a recognized drug treatment program;
- (f) failure to successfully complete a drug treatment program prescribed by a duly qualified medical professional;
- (g) any illegal drug use after being granted a security clearance; and
- (h) expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use.

Applicant admitted his use of illegal drugs (marijuana) between March 2011 and April 2011. He acknowledged that the use occurred at four different engagement parties. He held a security clearance at the time. AG¶ 25(a) and (g) apply.

AG ¶ 26 provides conditions that could mitigate security concerns:

- (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;
- (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; and
 - (4) a signed statement of intent with automatic revocation of clearance for any violation;

Applicant's last use of marijuana was in 2011. He states that he has not used any illegal drugs since that time. He signed a letter of intent. He states that he used the drugs due to peer pressure. Despite his intentions to not use marijuana, I find his judgment questionable. He has not mitigated the security concerns under Guideline H.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. Under AG ¶ 16(a), a disqualifying conditions exists when there is "deliberate omission, concealment, or falsification of relevant facts from any personnel questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security eligibility or trustworthiness, or award fiduciary responsibilities."

Applicant deliberately misled the government by not including any information about his drug involvement in 2011 or the fact that he held a security clearance while doing so in 2011. He did not reveal the information during a 2013 interview. When the 2014 security application for another clearance was reviewed, it was revealed that he did not disclose the information on the 2013 application. He has given various reasons for the initial omission as discussed above. I do not find him credible. His behavior and personal conduct are disqualifying as they raise questions about his judgment, reliability, truthfulness, and willingness to comply with the law. AG 16(a) applies.

After considering the mitigating conditions outlined in AG ¶ 17, I conclude that none of them apply. Applicant did not make prompt or good-faith efforts to correct his falsification or concealment until 2014. He provided no information that indicates he was ill-advised. The incidents are too recent and serious to be mitigated by the passage of time. I have serious doubts about his good judgment and reliability. He has not provided information in this record to show that he has met his burden of proof to mitigate the personal conduct concern.

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 an applicant's conduct and all the 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 33 years old. He has held a security clearance since 2005. He worked for several companies in the defense field. He has excellent recommendations from his employers. They attest to his character and dedication to work and family. He submitted drug screens from 2014 as well as a psychological report. He was interviewed for an addiction index. He has signed a Letter of Intent.

Applicant used marijuana at four engagement parties in 2011. He fell to peer pressure. He had a security clearance for a number of years. In addition, Applicant falsified his March 2013 SCA by not disclosing the information about his 2011 marijuana use. He also stated that he corrected his mistake. The reason the information came to light was another SCA for another agency in 2014. Applicant failed to submit sufficient information or evidence to mitigate the security concerns raised in his case. Applicant has not shown good judgment and honesty. He has disregarded the prohibition against marijuana use, including while holding a security clearance. Accordingly, Applicant has not mitigated the security concerns.

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.b:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	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 a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge