



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



In the matter of:)	
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)	ISCR Case No. 14-06955
)	
Applicant for Security Clearance)	

Appearances

For Government: Ross Hyams, Esquire, Department Counsel
For Applicant: *Pro se*

June 1, 2016

Decision

MOGUL, Martin H., Administrative Judge:

On June 1, 2015, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines H and E for Applicant. (Item 1.) 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 for SORs issued after September 1, 2006.

Applicant replied to the SOR (RSOR) in writing on June 22, 2015, and he requested that his case be decided on the written record in lieu of a hearing. (Item 3.) On August 25, 2015, Department Counsel issued the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant. In the FORM, Department Counsel offered five documentary exhibits. (Items 1-5.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on October 24, 2015. Applicant submitted additional evidence including a letter from Applicant and two character letters, which have been identified and entered into evidence without objection as Items A and B.

The case was assigned to this Administrative Judge on November 10, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

Findings of Fact

In his RSOR, Applicant admitted all of the SOR allegations, 1.a. through 1.f., and 2.a., with mitigating information included. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the FORM, and the admitted documents, and upon due consideration of that evidence, I make the following additional findings of fact:

Applicant is 28 years old. He has never been married, and he has no children. Applicant received a Bachelor of Science degree in 2010 and a Master's degree in 2013. Applicant has been employed as a member of the engineering staff by his current employer, a defense contractor, since June 2014, and he seeks a DoD security clearance in connection with employment in the defense sector. (Item 4.)

Guideline H - Drug Involvement

The SOR lists six allegations (1.a. through 1.f.) under Adjudicative Guideline H.

1.a. The SOR alleges, and Applicant has admitted in his RSOR, that he, "used marijuana from about 2007 to at least 2014." (Items 1 and 3.) On his Security Clearance Application (SCA) Applicant wrote that he stopped using marijuana for health reasons and because he did not want it to get in the way of his looking for employment. (Item 4.)

1.b. The SOR alleges, and Applicant has admitted in his RSOR, that he, "purchased marijuana." (Items 1 and 3.)

1.c. The SOR alleges, and Applicant has admitted in his RSOR, that he, "used Psilocybin (mushrooms) from about 2011 to at least 2013." (Items 1 and 3.) On his SCA Applicant wrote that he used mushrooms on two occasions when in college. (Item 4.)

1.d. The SOR alleges, and Applicant has admitted in his RSOR, that he, "purchased Psilocybin (mushrooms)." (Items 1 and 3.)

1.e. The SOR alleges, and Applicant has admitted in his RSOR, that he, "used lysergic acid diethylamide (LSD) from about 2008 to at least 2013." (Items 1 and 3.) On his SCA Applicant wrote that he used LSD on three occasions when in college. (Item 4.)

1.f. The SOR alleges, and Applicant has admitted in his RSOR, that he, "purchased lysergic acid diethylamide (LSD)." (Items 1 and 3.)

Applicant wrote in his RSOR, which he signed on June 22, 2015, that all of his drug usage occurred before he applied for his security clearance and more than one year before he wrote the RSOR. The purchase and use of hallucinogens, listed as 1.c. and 1.d. on the SOR, occurred more than two years before the RSOR. He also wrote that the purchase of the hallucinogens listed as 1.d. and 1.f. on the SOR were “extremely infrequent, both occurring only twice in my life, and will not happen again.” (Item 3.)

Applicant also wrote in his RSOR that the drug usage and purchase,

occurred at a different stage in my life when I was a student, before I had settled down to a steady job, and was willing to experiment. Since I started working full time in an intellectually fulfilling field directly relevant to my master’s degree, a vastly different environment from an academic lifestyle, I have not associated with anyone who sells drugs, including the specific person whom I admitted to purchasing from during my interview (subparagraphs 1b, 1d, 1f). I avoid situations in which drug use takes place, such as those described in subparagraphs 1a, 1c, and 1e.

Finally, Applicant averred,

I have been working for [my employer] from June 2014 to present, during which time I have not repeated any of the actions listed in subparagraphs 1a-1f. I have no intention of purchasing or using illegal drugs in the future. I sincerely apologize for the reasons listed in subparagraphs 1a-1f.

Guideline E - Personal Conduct

The Government alleges in this paragraph that Applicant is ineligible for clearance because he engaged in conduct that exhibited questionable judgement, unreliability, unwillingness to comply with rules and regulations, and untrustworthiness. The following allegations are cited in the SOR as tending to show that:

2.a. That information set forth in subparagraphs 1.a. through 1.f., above, which Applicant admitted in his RSOR. In Item A, Applicant wrote that the six subparagraphs listed on the SOR were the only times in which he did not comply with all of the rules, regulations or laws.

Applicant also submitted two character letters. His manager since he started working at his current job on June 2, 2014, wrote about Applicant, “I have observed nothing in his character that would give me reason to question his judgment or ability to hold a DOD clearance. [Applicant] has been a valuable, ethical and trusted member of my team and represents all standards of [our employer].” The other letter from the Facility Security Officer of Applicant’s employer was also extremely positive. (Item B.)

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 ¶ 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. 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.

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 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 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 judgement and because it raises questions about a person's ability or willingness to comply with laws, rules and regulations.

With respect to Guideline H, the Government has established its case. Applicant's improper and illegal drug abuse, specifically the use of several different illegal substances over the course of several years, from 2007 to as recently as 2014, is of great concern, especially in light of his continued desire to have access to the nation's secrets. Applicant's overall conduct pertaining to his illegal substance abuse clearly falls within Drug Involvement ¶ 25(a) "any drug abuse," and (c) "illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution."

However, I find credible his written statement that he intends to abstain from using or purchasing marijuana or any illegal drug in the future. I also considered that Applicant stopped using illegal drugs before he applied for a security clearance, and the fact that Applicant revealed his drug usage on a SCA without any apparent outside information or source is significant. Finally, I considered the positive and laudatory character letters, which make Applicant's stated intentions to never use illegal drugs again more credible and convincing. Therefore, I conclude that ¶ 26(a) is applicable since "the behavior . . . was so infrequent" and "happened under such circumstances that it is unlikely to recur." Also, ¶ 26(b) "a demonstrated intent not to abuse any drugs in the future, including (1) "disassociation from drug-using associates and contacts;" (2) "changing or avoiding the environment where drugs were used;" and (3) "an appropriate period of abstinence;" is also applicable and mitigating.

In this case, the Government has met its initial burden of proving that Applicant has used illegal drugs under Guideline H. Applicant, on the other hand, has introduced persuasive evidence in rebuttal, explanation, or mitigation, which is sufficient to overcome the Government's case against him. Accordingly, Guideline H of the SOR is concluded for Applicant.

Guideline E - Personal Conduct

The Government relies heavily on the honesty and integrity of individuals seeking access to our nation's secrets. The Government is concerned if an Applicant for a security clearance engages in conduct that exhibits questionable judgement, unreliability, unwillingness to comply with rules and regulations, or untrustworthiness.

In reviewing the disqualifying conditions under Guideline E ¶ 16, I conclude that Applicant did knowingly and wilfully use and purchase illegal drugs, which does exhibit conduct that shows questionable judgement, unreliability, unwillingness to comply with rules and regulations, and untrustworthiness. However, the only conduct that is of concern under Guideline E has been alleged in Guideline H. As I have ruled that the underlying conduct, upon which Guideline H has been alleged has been mitigated, then I find that Guideline E has been mitigated as well. Therefore, I resolve Guideline E 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 the 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Based on all of the reasons cited above as to why the mitigating conditions are applicable and controlling under Guideline H, I find that the record evidence leaves me with no significant questions or doubts as to Applicant's eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has mitigated the security concerns under the whole-person concept.

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
Subparagraphs 1.a.-1.f:	For Applicant

Paragraph 2, Guideline E:

FOR APPLICANT

Subparagraph 2.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.

Martin H. Mogul
Administrative Judge