



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



In the matter of:

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ISCR Case No. 07-09178

Applicant for Security Clearance

Appearances

For Government: Robert E. Coacher, Esquire, Department Counsel

For Applicant: *Pro Se*

March 31, 2008

Decision

DAM, Shari, Administrative Judge:

Applicant failed to rebut or mitigate the Government's security concerns raised under Guideline H, Drug Involvement. His eligibility for a security clearance is denied.

On September 29, 2006, Applicant submitted his Security Clearance Application (e-QIP). On October 28, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline H 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On November 28, 2007, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. On December 20, 2007, Department Counsel prepared a File of Relevant Material (FORM), containing five

Items, and mailed Applicant a complete copy on December 26, 2007. Applicant received the FORM on January 2, 2008, and had 30 days from its receipt to file objections and submit additional information. Applicant did not submit additional evidence. On March 13, 2008, the case was assigned to me.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations contained in ¶¶ 1.a through 1.d. His admissions are incorporated herein as findings of fact.

Applicant is 32 years old and married. In April 2003, he earned a Doctorate of Philosophy in Industrial Psychology. In May 2006, he began working as a research scientist for his current employer, a federal contractor. In September 2006, he submitted an e-QIP. (Item 4).

In response to Section 24: *Your Use of Illegal Drugs and Drug Activity* on the e-QIP, Applicant disclosed the following information: (1) during August 2006, he used marijuana on one occasion; (2) from September 2002 to February 2006, he used marijuana 40-50 times; (3) in September 2003, he used cocaine once; (4) from January 1999 to September 2002, he used marijuana 80-100 times; and (5) from February 2000 to February 2002, he used cocaine three times. (Item 4 at 39).

In September 2007, Applicant completed Interrogatories regarding the above information. Applicant again disclosed the frequency and amount of his drug usage, and noted that he also used marijuana from August 1993 to December 1998 about 80 to 100 times. He asserted, "I stopped smoking marijuana in 2/2006. I did smoke once again in 8/2006 but have not since then." (Item 5 at 60). He decided to quit using illegal drugs because "it was time to "grow up" and know that if I wanted to receive a clearance one day that I would have to stop." (*Id.*). During a December 2006 interview with a government investigator, Applicant indicated that he never purchased marijuana or cocaine, but obtained it at social settings. (*Id.* at 26). His wife, parents and close friends know he used marijuana, but not the extent. They do not know about his cocaine use. Because he never felt addicted to marijuana, he has not sought treatment to cease using it. (*Id.*)

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used to evaluate 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 common sense 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 to obtain a favorable security decision. 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.”

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.

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.

AG ¶¶ 25(a)-(h) describe eight Drug Involvement Disqualifying Conditions that may be applicable to security concerns raised under this guideline. Based on Applicant's admissions that he used cocaine and marijuana from approximately August 1993 until September 2006, the Government raised a potentially disqualifying condition under AG ¶ 25(a) "any drug abuse (see above definition)."

After the Government produced substantial evidence of that disqualifying condition, the burden shifted to Applicant to produce evidence and prove mitigation. Four Drug Involvement Mitigating Conditions under AG ¶¶ 26 (a)-(d) are potentially applicable:

(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;

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and,

(d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

I reviewed the record evidence as a whole and conclude none apply. AG ¶ 26(a) does not apply because Applicant has frequently used marijuana and occasionally cocaine for the past fourteen years. His drug abuse does cast doubt on his current reliability and raises questions about his trustworthiness and good judgment. Other than his assertion in September 2007 that he has abstained from using illegal drugs since August 2006 and does not intend to use drugs in the future, Applicant did not produce any independent substantive evidence to corroborate his claim. Given the

frequency of his use since 1993, his statement alone is not persuasive and does not demonstrate an intention to stop abusing drugs, sufficient to trigger the application of AG ¶ 26(b). His drug use has not involved the abuse of prescription drugs, as required under AG ¶ 26(c), nor has he completed a drug treatment program, which is necessary to establish AG ¶ 26(d).

Whole Person Concept

In addition to evaluating the disqualifying and mitigating conditions under each guideline, the adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. The essence of scrutinizing all appropriate variables in a case is referred to as the “whole person” analysis. In evaluating the conduct of the applicant, the Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). Those factors include: (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) 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. Applicant is a 32-year-old highly educated man, who began voluntarily using illegal drugs in 1993 and continued using them until August 2006, three months after beginning his current employment with a federal contractor. While his September 2007 statement that he does not intend to use marijuana or cocaine in the future, along with his honest disclosure of his drug history, represent positive steps in addressing his drug problem, they are woefully inadequate to mitigate years of illegal drug use. Although he claims he is not addicted to marijuana, the evidence tends to paint a different picture. Absent independent corroboration, such as an evaluation from an appropriately credentialed health care provider or other source, documenting Applicant's assertions that he is drug free, along with proof of honest disclosures to his family about his drug use, he did not demonstrate that it is unlikely that he will cease using illegal drugs in the future.

Overall, the record evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his drug involvement.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline H: AGAINST APPLICANT

Subparagraphs 1.a to 1.d: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge