



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



In the matter of:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 07-09357

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: Pro Se

March 6, 2008

Decision

CREAN, Thomas M., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on August 9, 2006. On November 10, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) for Applicant detailing security concerns for drug involvement and personal conduct under Guidelines H and E. 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.

Applicant answered the SOR in writing on December 10, 2007. He admitted all factual allegations but denied they raised a security concern. He elected to have the matter decided on the written record in lieu of a hearing. Department counsel submitted the Government's written case on January 7, 2008. Applicant received a complete file of relevant material (FORM) on January 22, 2008, and was provided the opportunity to

file objections, and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant submitted additional information in an undated letter received by DOHA on February 8, 2008. Department Counsel had no objection to consideration of the additional material. The case was assigned to me on February 13, 2008. Based on a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant is a 21-year-old unmarried employee of a defense contractor who has applied, as part of his employment, for a security clearance. He is working for the defense contractor as a student intern. Applicant anticipates graduating from college in spring 2008, and being employed full time by the defense contractor. (Item 5)

Applicant listed on his security clearance application (Item 5) that he used the following illegal drugs:

- (a) Adderall ten times from July 2005 until January 2006;
- (b) Alprozolan once in December 2005;
- (c) Cannabis six times from June until December 2005
- (d) MDMA (ectacy) four times form July until December 2005;
- (e) Oxycodene ten times from June until December 2005;
- (f) Valium once in December 2005;
- (g) Diazepam once in December 2005;
- (h) Psilocybin once in July 2005;
- (i) Fentanyl once in July 2005;
- (j) Clonazepam once in July 2005;
- (k) Cocaine once in June 2005.

Applicant also admits to the above use of illegal drugs in his answer to the SOR. (Item 4). He also admitted to the use of the illegal drugs to security investigators. In addition to the use of the above illegal drugs from June 2005 until January 2006, Applicant admits to using "Salvia" in December 2006, just prior to being interviewed by security investigators. Applicant describes "Salvia" as a legal substance. Slavia is an herb grown in Mexico. There has been a recent interest among young adults and adolescents to rediscover ethno-botanical plants that can induce changes in perception, hallucinations, or other psychologically-induced changes. Since Slavia or any of its active ingredients are not specifically listed in the Controlled Substance Act, some on-line botanical companies and drug promotional sites have advertised Salvia as a legal alternative to other plant hallucinogens like mescaline. The plant material is smoked for the induction of "mystical" or hallucinogenic experiences. A dose of 200 to 500 micrograms produces profound hallucinations when smoked. Field tests show its effects are similar to mescaline. (Item 7 at 14) The substance caused him to have strong hallucinations. His vision was okay, but his mind was distorted. (Item 6 at 5)

Applicant was a full time college student when he experimented with drugs from June 2005 until January 2006. He used the drugs out of curiosity and experimentation. His use was usually in public settings at college events such as fraternity parties. He purchased the drugs from individuals for his own use. He admitted using drugs at work. An anonymous person reported his drug use to university officials. The university considered him a "low risk" for drug abuse, so he only had to attend a drug awareness class from December 2005 until January 2006. He stopped using drugs at the urging of his parents and school officials. (Item 6 at 3)

Applicant does not feel drugs had an adverse impact on his judgment, reliability, or personality. He does not feel his use of drugs from June 2005 until January 2006 had an adverse impact on his work, school, home, or friendships. One of his reasons for stopping the use of drugs was that he would be working at a position requiring a security clearance. He never had a positive drug test. He no longer uses illegal drugs. He admitted in response to questions from security investigators in December 2005 that he would not use drugs more than once a year, usually on his birthday. (Item 6 at 4) Once he has a family, he will not use illegal drugs. (Item 6) In response to interrogatories in September 2007, he stated he would not use illegal drugs again. (Item 6 at 8)

In his answer to the FORM, Applicant states that he experimented with drugs for only a short time and it should not be construed as a lifestyle portrait. He argues that when he used Salvia in December 2006, it was a legal drug and not a continuation of his use of illegal drugs. His experimentation with drugs for eight months is not a representation of his character. He stated that he openly and honestly admitted his mistake of using illegal drugs in the past. He made a poor choice in experimenting with drugs for that time. If Salvia had been illegal, he would not have used it. He admits his poor judgment during the eight months of drug use, but his other 250 months of life show his good judgment. His self-discipline and good judgment are shown by his pending graduation from college with highest honors, his lack of a criminal record, a clean academic and education record, and his good credit rating. He committed to his parents and his school that he would stop using illegal drugs, and he did so.

Applicant also noted that as of January 2008, the period of time he has not used drugs exceeded the period of time of experimentation by a factor of 3. He avoided the conditions and circumstances under which he used drugs. He understands two years of non-drug use is short, but he is willing to sign a statement of intent to never use illegal drugs again. He is willing to be randomly screened for drug use or have his honesty tested in any way. He admits to making mistakes in the past but that he has been forthright, honest, and completely candid during the security process. (Case file, Answer to FORM).

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 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 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 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.

Analysis

Drug Involvement:

The use of an illegal drug or the 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 drugs identifies and listed in the Controlled Substance

Act of 1970, as well as inhalants and other similar substances. Drug abuse is the illegal use of a drug or the use of a legal drug in a manner that deviates from approved medical directions. (AG ¶ 24)

Conditions that raise a security concern and could disqualify a person are Drug Involvement Disqualifying Condition AG ¶ 25(a) (any drug abuse), and AG ¶ 25(c) (illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia). The disqualifying conditions are established because Applicant admitted to using a variety of illegal drugs or prescribed drugs that deviated from approved medical direction over an approximately eight month period of time. He also admitted purchasing the drugs. He had to possess the drugs to use them.

I considered Drug Involvement Mitigating Conditions AG ¶ 26(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). Applicant's main experimentation with drugs was from June 2005 until January 2006, but he did use a drug in December 2006. While Applicant claims the drug was legal, he does admit it caused him to hallucinate. Even though it may be legal, it is mind altering since it causes hallucinations. This mitigating condition does not apply since his last use was about 15 months ago, he used drugs a number of times a month during experimentation time so his use was not infrequent, and experimentation is not an unusual occurrence.

Ag ¶ 26(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 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) applies in part. It appears that Applicant has changed his environment and is not associating with drug abusers. He realizes drug abuse will affect his eligibility for a security clearance. He expresses a willingness to execute a statement concerning automatic withdrawal of security clearance for a violation of the drug abuse policy. However, his last drug use was just about 15 months ago. While he classifies that drug as a legal drug, it was a hallucinogen and did cause Applicant to hallucinate. It does not show good judgment, reliability or trustworthiness to use a drug that causes hallucinations. While his vow not to use drugs in the future seems sincere, it is not sufficient to overcome the security concern for drug abuse. He vowed before to his parents and school officials not to abuse drugs, but he went against that vow in December 2006 when he used Slavia. He stated he would not have used the drug if he thought it was illegal. Since it was legal, he stated he used it. The drug caused hallucinations which show that it could affect his reliability and good judgment and his ability to protect classified information. It also shows a propensity to rationalize drug use. I find against Applicant for drug involvement.

Personal Conduct:

A security concern is raised because conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. (AG ¶ 15) Personal conduct is always a security concern because it asks the central question does the person's past conduct justify confidence the person can be entrusted to properly safeguard classified information. The security clearance process depends on the individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified information is in the best interest of the United States Government. Applicant's response concerning his future use of drugs raises security concerns under Personal Conduct Disqualifying Condition AG ¶ 16(a) (the deliberate omission concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history, or similar form used to conduct investigations determine security eligibility or trustworthiness).

Applicant denied intentional falsification. He states he was open and candid during the security investigative process, providing all information to the best of his knowledge. In December 2006, he stated to investigators that he would only use illegal drugs about once a year on special occasion like his birthday. In September 2007, he stated he had decided not to use illegal drugs even on special occasions. While there is a security concern for falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance, every inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully. The sequencing and timing of the statements are perfectly conceivable and appropriate. Applicant first believed he would only use drugs occasionally. After reflection, he decided later not to use drugs again. He did not intentionally falsify information during the security clearance process. I find for Applicant as to Personal Conduct.

"Whole Person" Analysis

Under the whole person concept, the Administrative Judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. An 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) 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 a security clearance must be an overall

common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered that Applicant is young and about to complete college. I considered that he anticipates graduating with honors from a difficult program at a prestigious college. While in school, he experimented with drugs, a fact he now regrets. However, he did experiment with a variety of drugs for six to eight months over two years ago. He then used a hallucinogenic drug just over a year ago. Even though he claims the drug is legal, it did cause him to hallucinate. This recent use of hallucinogenic agents and a his ingness to use mind altering drugs shows he exercises bad judgment. His use of drugs raises questions about his trustworthiness, responsibility, and good judgment. I conclude Applicant has not mitigated the security concerns arising from his drug involvement. Clearance is denied.

Formal Findings

Paragraph 1, Guideline H: AGAINST APPLICANT

 Subparagraphs 1.a - 1.m: Against Applicant

 Subparagraphs 1.n and i.o: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

 Subparagraphs 2.a: For 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge