



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



In the matter of:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 07-09751

Appearances

For Government: Rita C. O'Brien, Esquire, Department Counsel
For Applicant: Pro Se

March 6, 2008

Decision

LYNCH, Noreen, Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on August 16, 2006. On October 29, 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.

Applicant acknowledged receipt of the SOR on November 19, 2007. He requested a hearing before an Administrative Judge. DOHA received the request on January 15, 2008 and I received the case assignment on the same day. DOHA issued a notice of hearing on January 28, 2008, and I convened the hearing as scheduled on February 14, 2008. The government offered Exhibits (Ex.) 1 through 4, which were received without objection. Applicant testified on his own behalf and submitted Exhibits

A through C, without objection. He also presented one witness. DOHA received the transcript of the hearing (Tr.) on February 22, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR, received December 3, 2007, Applicant admitted the factual allegations in ¶¶ 1.a through 1.d of the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is a 26-year-old employee of a defense contractor. He graduated from high school in 1999.¹ He is married with two young children. He has been with his current employer since May 2006.²

Applicant used marijuana sporadically from 1995 until 1999 while he was in high school. He also purchased it from friends while he was in school and used it on the weekends with his friends. He sometimes sold marijuana in joint form to his friends.

After graduation from high school, Applicant started working in a local restaurant. He continued to use marijuana occasionally and bought it when he needed it. If he happened to have marijuana, he would sell it to his friends.³

Applicant worked as a project supervisor from 2000 until 2005. In winter 2004, he tested positive for marijuana during a drug screening at work. He told his boss that he would not pass the test because he had smoked some marijuana a few weeks prior. During this period of time Applicant sometimes used marijuana at parties. He remained with the company. He was not disciplined nor was he ordered to attend any drug counseling, but he could not work on the same area because of safety issues.⁴

In February 2005, Applicant was arrested and charged with possession of marijuana with intent to distribute. He was stopped while driving because his car had swerved. The police office found four ounces of marijuana. He went to court for the charge. The charge was dismissed.⁵

After the 2005 incident, Applicant realized his responsibility for his family and his job. He felt blessed that the charge was dismissed and realized the impact this could

¹GE 1 (Security Clearance Application, dated August 16, 2006).

²*Id.*

³Tr. 32.

⁴Tr. 37.

⁵Tr. 48; GE 3 and 4.

have on his future. Applicant does not associate with anyone who uses marijuana. He is married and has a son who is three years old. He is active in his church. He maintains close ties with his family. His older brother, who holds a top secret clearance, mentors Applicant. He testified at the hearing that Applicant and his family are very close. They interact on a daily basis. He has seen him mature in the past few years. Applicant's brother attested to Applicant's good work in school and attributes the use of marijuana to being involved with the "wrong crowd."⁶

Applicant's current employer praises his outstanding work ethic. Applicant arrives to work eager to complete his projects. His attendance record is excellent. He works when required on weekends and holidays. Applicant has been promoted to a site supervisor within a relatively short period of time. Applicant is responsible for approximately 20 employees. He is subject to random drug tests and recently passed a drug screening.⁷

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,

⁶Tr. 58.

⁷AE A, B and C.

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

The guideline notes several conditions that could raise security concerns. Under AG & 25(a), Any drug abuse^o is potentially disqualifying. Similarly under AG ¶ 25(b), Testing positive for illegal drug use^o may raise security concerns. Applicant acknowledged using marijuana sporadically for a period of time from 1995 until 2005. He tested positive for drug use in 2004. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

Under AG ¶ 25(c) “illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia” is also potentially disqualifying. Applicant admits selling and purchasing marijuana from friends. In 2005, he was arrested for possession of marijuana with intent to distribute. He had approximately four ounces of marijuana in his possession. The charge was dismissed.

The guideline also includes examples of conditions that could mitigate security concerns arising from drug involvement. Under AG ¶ 26 (a), the disqualifying condition may be mitigated where the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment. Applicant's illegal use arose when he was in high school until 2005. He has abstained from using marijuana for about three years. He changed his attitude about using marijuana when he was arrested. He also became aware of his responsibility for his family and his children. He not only states that he does not intend to use marijuana in the future, he has demonstrated an ability to stay away from marijuana use and the friends who use drugs. His witness credibly testified to observed changes in behavior and attitude subsequent to 2005. His brother attributes this change, in part, to abstinence from use of marijuana. I find under the specific circumstances of this case that the behavior happened so long ago and under circumstances that are unlikely to recur, that it does not raise concerns about his current reliability, trustworthiness, or good judgment. The evidence raises this potentially mitigating condition.

Under AG ¶ 26 (b), it may be mitigating where Aa 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. As noted above, some of the problems arose from Applicant's immaturity. Applicant has matured, is raising his family, is working in a good position, is active in his church and community, and has a good attitude. For all the reasons stated above, I find this potentially mitigating condition applies.

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) 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 common sense 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. When these problems first began, Applicant was a high school student. He was in with the wrong crowd. He had a wake up call when he was arrested in 2005. He has no other criminal record. He is a hard

worker, a trustworthy young man. He is married and has two children. As a result, he has focused his attention on providing a stable environment for his family. He was very candid and forthright at the hearing.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Noreen A. Lynch
Administrative Judge