



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



In the matter of:)	
)	
)	ISCR Case No. 07-10237
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: John Glendon, Esquire, Department Counsel
For Applicant: *Pro Se*

April 15, 2008

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant completed Electronic Questionnaires for Investigations Processing (e-QIP) and certified the accuracy of his information on October 23, 2006. On December 21, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns 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, and 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 January 28, 2008, Applicant acknowledged receipt of the SOR, answered the SOR allegations in writing, and requested a hearing. DOHA received that request on February 26, 2008, and the matter was assigned to me on February 27, 2008. Department Counsel and Applicant proposed a March 25, 2008, hearing, and a Notice of Hearing was issued on March 14, 2008, to set the hearing for that date.

The hearing took place as scheduled. Department Counsel submitted three exhibits (Ex.). which were accepted into the record as Exs. 1-3 without objection. Applicant submitted one exhibit, accepted as Ex. A without objection. No witnesses were called. Department Counsel referenced a typographical error in the SOR, noting that the second line of allegation 1.a stating "*until at least May 2007*" should have read "*until at least May 2006*." Applicant concurred with the correction and reaffirmed his admission to the allegation.¹ The transcript (Tr.) was received on April 2, 2008. Based upon a review of the case file, exhibits, and testimony, security clearance is denied.

Findings of Fact

Applicant is a 44-year-old government consultant who has worked for the same defense contractor since 2001. He has a bachelor's degree in accounting information systems and currently works as a computer operating system subject matter expert. He has been married for 23 years and has three children, currently aged 19, 21, and 23.

Throughout most of Applicant's married life, he and his wife strived to provide a nurturing home for their children in which church attendance and open discussion were encouraged.² Applicant prided himself in being the head of the family. In 2005, their youngest child was 16 years of age. She was strong willed and highly social, as opposed to her more reserved siblings.³ It was often difficult for Applicant to help her address her problems.⁴ Moreover, she could not drive a car and felt bored and isolated at home. Applicant had already tackled the issue of cigarette smoking with he was "were alarmed and upset" to discover she was buying and using marijuana.⁵

Around the same time in 2005, Applicant and his wife were having their own respective problems. For the first time in their lengthy marriage, each felt overwhelmed by a number of factors, including marital, professional, and personal problems.⁶ He was experiencing anxiety and some panic disorders while his wife was suffering from fibromyalgia and mild depression. Both were prescribed and taking Zoloft, an antidepressant. Applicant feels the medication affected his judgment and control and, in concert with his stress, led Applicant and his wife to occasionally do things that they would usually not otherwise do. He stated that, as of about July 2005, this included the use of marijuana about once a week, a drug which he had not used since college. Applicant's problems and prescription also affected the way he dealt with his youngest

¹ Tr. 8.

² Tr. 15-16.

³ Tr. 35.

⁴ Tr. 15.

⁵ *Id.*

⁶ Tr. 59.

child's marijuana use.⁷ Rather than forbid her use of the illegal drug or to forbid its use in their home, he decided she could use marijuana at home, where he believed her illegal drug use would be "safer."⁸ Eventually, parents and daughter used marijuana together.

Applicant never bought illegal drugs directly. He and his wife had taken in a family friend after the friend was released from prison⁹ to help in his rehabilitation.¹⁰ The young man knew people who sold marijuana, so Applicant would buy the substance through him. Twice during the summer of 2005, however, Applicant gave his 16-year-old daughter money to go buy drugs for him from a known source in the neighborhood.¹¹

Applicant's change in behavior in 2005 carried over to his work life. Although now in his 40s, he increased his after hours socialization with co-workers, often joining them for cocktails after work. One night in April 2006, following a post-work happy hour, he was charged with Driving While Intoxicated (DWI) and put on probation for a year.¹² As part of his probation, Applicant was not permitted to drink alcohol or smoke "anything."¹³

Applicant successfully completed a 10 week alcohol education course and 20 weeks of group counseling, attended a alcohol-focused victim impact panel session, and refrained from drinking and smoking. His counseling was non-medical, mostly conducted by licensed clinical social workers and credentialed specialists.¹⁴ During this time, his interaction with many of the individuals in counseling "changed the way that [he] looked at" himself as he realized "that's not me."¹⁵ The experience made him reconsider his recent poor choices.¹⁶ He has successfully re-assumed his role as head of his household and provides guidance for his family.¹⁷ He stopped using marijuana in May 2006 and his family is now drug-free. He does not associate with those who use drugs or drink heavily. Applicant is refocused on his parental duties as a leader and role

⁷ Tr. 16.

⁸ Tr. 17.

⁹ Tr. 47.

¹⁰ Tr. 39.

¹¹ Tr. 19-20, 30.

¹² Tr. 20.

¹³ Tr. 21.

¹⁴ See., e.g., Tr. 55.

¹⁵ Tr. 22-23.

¹⁶ Tr. 25.

¹⁷ Tr. 26-27.

model, he quit smoking cigarettes, and strictly limited his use of alcohol.¹⁸ He has no intention of using drugs in the future or to let it “be a part of [his family’s] lives.”¹⁹

As Applicant was completing his final counseling sessions, he completed his e-QIP in October 2006. At the time, Applicant explained to his daughter the importance of their getting their lives together and how their actions could impact their future. He specifically pointed to his execution of the e-QIP, noting that he was obligated to honestly and fully admit in detail the facts surrounding his alcohol use and drug use.²⁰ Under Section 23 (*Your Police Record*), he acknowledged he had been “charged with or convicted of any offense(s) related to alcohol or drugs.” He cited to his April 2006 DWI, described in detail the action taken by the county court, and listed all his probation terms. Under Section 25 (*Your Use of Alcohol*), Applicant gave detailed information as to his alcohol-related treatment between June 2006 and November 2006.

Under Section 24 (*Your Use of Illegal Drugs and Drug Activity*), Applicant admitted that he had illegally used a controlled substance in the last seven years and noted that he used marijuana about four times per month from July 2005 through May 2006. Because he believed the question made reference to personal monetary profit, however, he answered “no” to the question “*In the last 7 years, have you been involved in the illegal purchase, manufacture, trafficking, production, transfer, shipping, receiving, or sale of any narcotic, depressant, stimulant, hallucinogen, or cannabis for your own intended profit or that of another.*”²¹ His statements have been consistent on this interpretation throughout this process.²² In his interview after submitting the application, Applicant volunteered that he had twice given his daughter money to buy marijuana.

Applicant successfully completed all court-required aspects of his probation. His probationary period ended May 14, 2007. He has been screened for drug usage in the past year without adverse incident. His family took 20 weeks of family counseling to work on their own dynamics and for Applicant to work on his marriage.²³ Today, the family lives together harmoniously with Applicant actively serving as the family’s leader. Applicant is embarrassed and contrite about his judgment lapses concerning drugs.

¹⁸ Tr. 23.

¹⁹ Tr. 30.

²⁰ Tr. 38.

²¹ Tr. 23; 51-53.

²² See, e.g., Tr. 53.

²³ Tr. 50.

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. Under AG ¶ 2(c), this 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.

The 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. . . ." ²⁴ The burden of proof is something less than a preponderance of evidence. ²⁵ The ultimate burden of persuasion to obtain a favorable clearance decision is on the applicant. ²⁶

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

²⁴ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

²⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

²⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

applicant concerned.” See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”²⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²⁸ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.²⁹ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find the following adjudicative guidelines to be the most pertinent to the evaluation of the facts in this case:

Guideline H - Drug Involvement. *The Concern:* 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. “Drugs” are defined as mood and behavior altering substances, and include 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 inhalants and other substances. “Drug abuse” is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

Guideline E - Personal Conduct. *The Concern:* 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. 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.

Conditions pertaining to these adjudicative guidelines that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, are set forth and discussed in the conclusions below.

Analysis

Guideline H, Drug Involvement

Applicant, now 44 years of age, used marijuana in high school and in college. He also admits he bought and weekly used marijuana about once a week between July

²⁷ *Id.*

²⁸ *Id.*

²⁹ Executive Order 10865 § 7.

2005 and May 2006. Consequently, Drug Involvement (DI) Disqualifying Condition (DC) AG ¶ 25(a) (*any drug abuse*) applies.³⁰ With a disqualifying condition thus established, the burden shifts to Applicant to mitigate security concerns.

In context, Applicant's student abuse of marijuana can be characterized as a youthful indiscretion with no apparent nexus to his marijuana use over 20 years later. That 10 months of weekly marijuana abuse in 2005-2006 occurred during an isolated period fraught with personal problems and a diagnosed anxiety disorder that necessitated a prescription drug. Although Applicant presents no medical corroboration as to that drug's effect on his thinking, the facts do indicate that at all other times he was a husband and father who proudly served as a role model who maintained strict control of both his family and himself. Applicant's credible testimony also shows that the April 2006 DWI and subsequent counseling prompted him to regain control of his family and his life. Given the unique personal problems existent at the time, there is scant likelihood that the situation will repeat itself. Therefore, DI Mitigating Condition (MC) 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*) applies. None of the other DI MCs, however, apply.

Applicant acknowledges that he made an adult choice to personally use illegal drugs and he has made the adult choice to take personal responsibility for his actions. In voluntarily disclosing facts that otherwise would never have been known, he demonstrated honesty, candor, and genuine contrition. His explanations as to why he used marijuana, why he stopped using it, and what he has done to change his life in such a way as to eschew drugs in the future are highly credible. In light of his nominal drug use during an isolated period, his embarrassment over his lapse in judgment with regard to his personal integrity and familial responsibilities, and his depiction of how he turned his life back around, Applicant has mitigated significant security concerns.

Guideline E, 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. Applicant faces two allegations regarding such conduct. First, Applicant answered "no" to e-QIP Section 24: Your Use of Illegal Drugs and Activity regarding the fact he bought marijuana for personal use. He explained that he interpreted the question's phrasing – "*have you been involved in the illegal purchase . . . [of] cannabis for your own intended profit or that of another*" – to ask whether he had purchased drugs to make money or reap monetary profit for himself or others. Consequently, he answered "no."

³⁰ Because Applicant readily admits he bought the marijuana he used, specific discussion as to the unique facts involved in how he solicited such purchases is reserved for Guideline E, Personal Conduct.

In all other respects, Applicant's e-QIP answers are candid and detailed. There is no indication that he deliberately omitted or falsified facts, favorable or unfavorable. Inasmuch as all the facts point to Applicant's answer to Section 24 as being the result of a simple misunderstanding, I conclude no Personal Conduct (PC) DC applies here.

Second, the SOR also alleges that more generic personal conduct security concerns arise from the fact Applicant gave his then-teenage daughter money to illegally purchase marijuana for his personal consumption. This allegation, which Applicant fully admits, is uniquely troubling. Such adult conduct, in light of all the other facts, gives rise to PC DC AG ¶ 16(d) (*credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which when combined with all available information supports a whole person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information*).

When Applicant fully disclosed and expressed contrition for his lapse in providing familial leadership when he chose to personally use an illegal drug, it was with regard to an adult choice he personally made. He made that choice with full knowledge of the legal and professional repercussions it might cause him. Here, however, his conduct was more pervasive. He did not simply abuse marijuana furtively or hide his personal drug use – from his minor daughter or the young man he was helping to rehabilitate – so as to maintain the facade of a role model. Nor did he simply “smoke along” with them in what he described as the safety of his home. Rather than simply extend his own illegal activities to include his personal purchase of marijuana, he actively sought out the criminal involvement of others – his daughter, a minor undergoing a difficult phase, and a young man recently released from prison and undergoing rehabilitation. In so doing, he not only invited the complicity of those he was expected to protect and put them in potential danger, but he condoned and encouraged their criminal activity for his personal benefit. Such selfish conduct demonstrates exceptionally poor judgment and an overt disregard of the law. After careful consideration, none of the available PC MCs apply.

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 public trust position 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, as well as the “whole person” factors noted above. Applicant is a middle aged father of three adult children. He is an affable professional who takes pride in being the head of his family and a role model to his children. For one brief 10-month period, due to a variety of genuine reasons, he illegally used marijuana. Applicant’s past drug use can be mitigated to the extent it was a brief period candidly detailed on his e-QIP which he is committed to never again repeat.

Applicant’s candor, however, extended beyond his personal drug use into a more troubling area. He invited the complicity of his minor daughter and a young, former inmate, undergoing personal rehabilitation to purchase marijuana for his own use. Such conduct displays uniquely poor judgment, with regard to Applicant’s overt disregard of the law and to his exploitation of both his daughter and the young man, which remains unmitigated. Because the applicable guidelines dictate that any doubt concerning personnel being considered for access to classified information must be resolved in favor of the national security, clearance is denied.

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
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For 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. Clearance is denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge