



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



In the matter of:)
)
) ISCR Case No. 07-13584
)
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn E. Hoffman, Department Counsel
For Applicant: George A. Pivivar, Esquire

July 16, 2008

Decision

HEINY, Claude R., Administrative Judge:

Applicant last used marijuana two weeks after completing graduate school. His last use occurred more than a year ago. After a thorough review of the case file, pleadings, exhibits, and evidence, I conclude Applicant has rebutted or mitigated the government’s security concerns under Guideline H, drug involvement. Eligibility for access to classified information is granted.

Statement of Case

Applicant contests the Defense Department’s intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued to

¹ 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) approved by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant a Statement of Reasons (SOR) on January 3, 2008, detailing security concerns under Guideline H, drug involvement.

On January 15, 2008, Applicant answered the SOR, and requested a hearing before an administrative judge. On March 5, 2008, I was assigned the case. On April 14, 2008, DOHA issued a notice of hearing scheduling the hearing held on April 23, 2008. The government offered Exhibits (Ex.) 1 and 2, which were admitted into evidence. Applicant testified on his own behalf and submitted Exhibits A through D, which were admitted into evidence. On May 9, 2008, the transcript (Tr.) was received.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations of the SOR, with explanations.

Applicant is a 25-year-old scientific programmer who has worked for a defense contractor since May 2007, and is seeking to obtain a security clearance. His supervisor believes Applicant is a very good worker, a self starter, a good learner, interested in his job, and as a new employee is doing quite well. (Tr. 124, 131) Applicant is frank, honest, and likable. His work performance was rated mainly as having "fully met" the objectives and requirements of the job, with one rating of "consistently exceeded" the requirements of the job. (Ex. C and D)

Applicant was a casual user of marijuana in high school and college. (Answer to SOR) His first use was in 1997 at the age of 15. (Ex B, Tr. 49) From 2000 through May 2005, when he graduated from college, he smoked marijuana two or three times a week. (Ex. 2) Following college, from August 2005 to June 2007, he used marijuana four or five times a year. Applicant told his counselor he had used marijuana three to four times a week from age 18 to 20 and from age 20 to 22, he used it once a week. His reduction in marijuana usage occurred after he started dating the woman who became his wife.

His last use occurred in June 2007, shortly after he completed his security clearance application, Standard Form (SF) 86, dated May 17, 2007. (Ex. 1) The usage occurred a couple of weeks after obtaining his Master's degree and a couple of weeks before his marriage. (Ex. 2) His most recent use prior to June 2007, occurred in February 2007, with his friends during Mardi Gras weekend. (Tr. 35,36)

In June 2007, a friend of his wife came to Applicant's and his wife home, accompanied by a male friend. Applicant smoked marijuana with his guests. (Tr. 78) A few days later, Applicant noticed his guests had left the marijuana pipe with some marijuana in it. (Tr. 79) Knowing he was about to get married, Applicant saw this as his last opportunity to smoke marijuana and lit the pipe. (Tr. 79)

In June 2007, Applicant married, which was a life-changing event. He values his time with his wife. His wife has completed medical school and is doing her residency.

She is a focused and disciplined person. His wife has expressed her dislike for marijuana use. (Tr. 33)

Applicant was president of his high school senior class. As an honor student, he graduated near the top of his class. Applicant's father believes Applicant is a leader, hard working, forthright, humble, honest to a fault, active in school, driven to do the best he could, and follows through on what he says. (Tr. 92, 97, 108) Applicant has always been goal-driven, motivated, and disciplined. He is very serious about his first full-time job. (Tr. 116) With his marriage, his father sees Applicant as more mature and disciplined who learns from his mistakes. (Tr. 118)

In college, Applicant received a senior achievement award for academic achievement. (Tr. 26) During college he spent 15 hours per week involved with the campus ministry. (Tr. 26) In 2005, he graduated from college with a bachelor of science degree and a 3.7 GPA. In 2007, he received a master of science degree with a 4.0 GPA. (Ex A)

Applicant no longer sees old friends who he associated with and with whom he smoked marijuana. He describes them as still single and "kind of having trouble moving past that part of their lives." (Tr. 40) He now spends most of his time with his wife and couples they know. He now has his first full time job. He now sees himself and his wife as more spiritual. He had fallen away from the faith in which he grew up. He occupies his free time with his house and dogs.

Applicant intends to never smoke marijuana again. (Tr. 38) At Christmas time 2007, he was offered marijuana, but turned it down. Applicant is willing to sign any type of automatic revocation agreement whereby his employment would end should he test positive for any illegal drug. (Tr. 42)

In April 2008, Applicant had a chemical dependency evaluation. (Ex. B) Applicant was diagnosed as having a low probability of having a substance dependence disorder with chemicals and therapeutic intervention was not justified. (Ex. B)

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.

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

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. (AG ¶ 24) AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. Applicant smoked marijuana in high school, college, and grad school. His last usage was in June 2007. AG ¶ 25a “any drug abuse” applies.

Applicant last marijuana use occurred after he had started working for his present job and after he had submitted his security questionnaire. However, AG ¶ 25g “any illegal drug use after being granted a security clearance” does not apply because a clearance had not been granted.

AG ¶ 26 sets forth conditions that could mitigate security concerns. Applicant first used marijuana in high school. The first two years of college he used marijuana two or three times a week. During the second two years, after he met and starting dating the woman he would marry, his usage was once a week. After college, during graduate school, his usage was four or five times a year. He used it in February 2007 with friends during Mardi Gras weekend. He saw his last use in June 2007 as his last opportunity to use marijuana because he had just completed graduate school, was within two weeks of marrying, and had just started his first full-time job.

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,” has some applicability. The last use was recent, however, his usage during the last two year was infrequent. His usage occurred while he was a student, except for the last usage occurring two weeks after graduation. Applicant’s marriage, change of associates, stated intent never to use again, and full-time employment indicate it is unlikely he will use again.

AG ¶ 26b “a demonstrated intent not to abuse any drugs in the future,” applies. He has stated he will not use marijuana again and it has been a year since his last use. He no longer associates with his high school associates and sees his college friends infrequently. AG ¶ 26b (1) “disassociation from drug-using associates and contacts,” applies.

Applicant is no longer in college. His wife is completing her medical residency and they associate with other married couples who are also completing their residencies. AG ¶ 26b (2) “changing or avoiding the environment where drugs were used,” applies. Applicant has stated a desire to sign a statement of automatic revocation of clearance for any future use, but has not done so. Therefore, AG ¶ 26b (4) “a signed statement of intent with automatic revocation of clearance for any violation,” does not apply.

In April 2008, Applicant had a chemical dependency evaluation and was diagnosed as having a low probability of having a substance dependence disorder with chemicals. Therapeutic intervention was not justified. AG ¶ 26 (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,” does not apply because there was no treatment.

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. Applicant is relatively young, currently age 25. Since May 2007, he has undergone life-changing events. He graduate from grad school, obtained his first full-time job, and got married. Each event having a maturing effect on Applicant. He spends his time with his wife, their dogs, and working on the house. He no longer associates with his college friends, but now associates with married couples and his wife's friends who are completing their medical residencies.

Applicant is a bright, intelligent person. He did well academically in high school, college, and graduate school. He is goal-driven, motivated, and follows through on what he says. His stated intent is not to use marijuana again.

As people mature, their values change. What is important to a high school student or a single college student does not have the same importance to a married man with his first full-time job. Marijuana usage is often more frequent with college students than with working individuals. As Applicant matured his marijuana usage decreased. His frequent of use first decrease when he started dating his wife. It further decreased when he left college and went to graduate school and has stopped since his marriage. Applicant appears to have outgrown his marijuana use.

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.

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, drug involvement : FOR APPLICANT

Subparagraph 1.a – 1.c:

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's request for a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge