



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



In the matter of:)
)
) ISCR Case No. 07-13844
)
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro Se*

October 29, 2008

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the government’s security concerns under Guideline H, Drug Involvement and Guideline E, Personal Conduct. Applicant’s eligibility for a security clearance is denied.

On March 24, 2008, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant 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; 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 April 24, 2008, and elected to have his case decided on the written record. Department Counsel submitted the government’s file of relevant material (FORM) on July 24, 2008. The FORM was mailed to Applicant

on July 28, 2008, and it was received on August 26, 2008. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the FORM and did not submit additional material. The case was assigned to me on October 24, 2008.

Findings of Fact

Applicant admitted all of the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and statements submitted, I make the following findings of fact.

Applicant is 30 years old and has worked for his present employer, a federal contractor, since July 2006. Prior to then from January 2001 until he began his present employment he worked for a different federal contractor. He has held a secret security clearance since 2004. He is seeking a Top Secret security clearance.

Applicant began using marijuana when he was 13 years old and continued using it until January 2007. He resumed using it in July 2007 and used it after he completed his security clearance questionnaire on October 19, 2006. His use continued up to November 20, 2007, a week before he completed interrogatories questioning him about his drug use. Applicant was using marijuana while he held a secret security clearance.¹

Applicant admitted he used cocaine beginning when he was about 14 years old. He listed the frequency of his use as “2-3 lines” at a time on a “monthly” basis.² A statement attached to his response to interrogatories said: “I probably only used once or twice over the first three years, until I started working.” He did not further explain his use after he started working, although it appears from his first response that his use increased. He stated he stopped using cocaine in November 2005. He used cocaine while holding a secret security clearance.

Applicant also used hallucinogenic drugs to include LSD and mushrooms. He estimated he used these substances about 15 times over a four to five year period. He stopped using them around his 21st birthday. He stated: “What I originally thought was a ‘good time’ turned into downright frightening situations, and I did indeed stop using.”³

Applicant stated he is attempting to get a Top Secret security clearance. He believes himself to be a hard worker and is proud to be a part of the community where he works and is surrounded by very positive role models that are aware of his past experiences with drug use. He vows to stop all marijuana use.⁴

¹ Item 5.

² *Id.*

³ *Id.*

⁴ *Id.*

On his security clearance application, Applicant noted in Question 24 that he had used marijuana in 1997, during the month of July, on five occasions. He made additional comments that said: "after high school graduation, not used since." These statements were not alleged as falsifications and they will not be considered for disqualifying purposes, but will be considered when evaluating the "whole person."

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

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. 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; Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.”

I have considered all of the drug involvement disqualifying conditions under AG ¶ 25 and have especially considered (a) (“any drug abuse”); (c) (“illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution, or possession of drug paraphernalia”) and (g) (“any illegal drug use after being granted a security clearance”). Applicant admitted all of the drug use allegations and that he used illegal drugs while holding a security clearance. To use drugs one must possess them. Therefore, I find all of the above disqualifying conditions apply.

I have considered all of the drug involvement mitigating conditions under AG ¶ 26 and especially considered (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”), and (b) (“a demonstrated intent not to abuse 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; (4) a signed statement of intent with automatic revocation of clearance for any violation”). Applicant stated he does not intend to use marijuana in the future. He abstained from using illegal drugs for one six-month period in the last 16 years, but then lapsed back into using marijuana. His statement that he intended to stop using marijuana was made a week after his last use when he was answering questions to interrogatories for his security clearance. Applicant has a long history of using various illegal drugs. He is past the age of youthful indiscretion. He regularly used marijuana and cocaine while holding a secret security clearance, even while his background investigation was on-going. His use was frequent and recent. He did not offer sufficient evidence to show he has changed his ways. He has not met his burden of mitigating the security concerns raised by his drug use. His

actions cast serious doubt on his judgment, reliability and trustworthiness. Therefore, I find that no mitigating conditions apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to 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.”

I have considered the personal conduct security concerns. I find, based on the facts, AG ¶ 16 (e) (“personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group”) applies. Almost every aspect of a person's life can be evaluated generally as a security concern under Personal Conduct. I have considered all of the facts in this case from that Personal Conduct perspective. I find Applicant's conduct from a whole person analysis raises questions as to his judgment, reliability and trustworthiness, which could be exploited. Applicant did not provide sufficient evidence to mitigate the security concerns.

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 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 30 years old and has a long history of illegal drug use. After obtaining a secret security clearance he continued to use illegal drugs. Although he stated he does not intend to use illegal drugs in the future he only recently made a commitment to abstinence. Overall the record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability

for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from drug involvement and personal conduct.

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:	AGAINST APPLICANT
Subparagraph 1.a-1.d:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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.

Carol G. Ricciardello
Administrative Judge