



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-16085
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jennifer I. Goldstein, Esquire, Department Counsel
For Applicant: Pro Se

July 28, 2008

Decision

LYNCH, Noreen, Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on June 6, 2007. On February 8, 2008, 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 March 26, 2008, and elected to have his decision on the record in lieu of a hearing. Department Counsel submitted the Government's written case on April 28, 2008. Applicant received a complete file of relevant material (FORM) on May 16, 2008, and was provided the opportunity to file

objections and submit material to refute, extenuate, or mitigate the Government's case.¹ Applicant submitted additional information. The case was assigned to me on July 21, 2008. Based upon a review of the case file, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, received March 31, 2008, Applicant admitted all the factual allegations in the SOR.² He provided additional information to support his request for eligibility for a security clearance.

Applicant is a 30-year-old employee of a defense contractor. He has worked for his current employer since April 1998.³ He received promotions annually. He is currently single but planning to marry soon.

Applicant admitted in his June 2007 security clearance application to using, purchasing and selling marijuana, at times daily, from approximately March 1996 until at least July 2006. He also used psilocybin and/or psilocin (hallucinogenic mushrooms) once in 2000.⁴

Applicant began using marijuana in high school in March of 1996. He used marijuana with friends and with his parents as frequently as on a daily basis. He felt a mild euphoria and calmness after the use. His use progressed to about two to three times a week in high school. He frequently skipped school to smoke and dropped out of school. His marijuana use continued through July 2006. At that point he decided to stop using illegal substances because "they were not consistent with his goals for his personal/professional life. However, he used marijuana again with his father at a birthday celebration in June 2007. During the period of his marijuana use, he engaged in both the purchase of marijuana to support his habit and the sale of marijuana to friends.⁵ Applicant bought approximately \$200 of marijuana per month from 1996 until 2006.⁶

Applicant's parents and younger brother still use marijuana frequently. He claims that they do not offer it to him any longer. He has not participated in any drug evaluation

¹Department Counsel submitted five items in support of her contentions.

²Item 3 (Answer, signed March 31, 2008).

³Item 4 (Security Clearance Application, dated June 6, 2007).

⁴*Id.*

⁵Item 5 (Answers to Interrogatories, dated January 7, 2008).

⁶*Id.*

program. He believes that he was addicted to marijuana. He acknowledged pressure from his family to continue to smoke marijuana.

Applicant does not believe his use of illegal drugs should be excused. He believes he made a few bad decisions. He explained he grew up in an environment where the use of marijuana was considered the norm. He has not been in contact with marijuana since 2007. He vows he will not associate with any illegal substances again. He is buying a home with his fiancée and her five-year-old son. They are also expecting their first child together.⁷ He does not believe that he poses a threat to national security. He would agree to random drug tests over the next 12 months.

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

⁷*Id.*

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. Applicant admitted using marijuana from 1996 to May 2007. He used hallucinogenic mushrooms in 2000. The evidence is sufficient to raise this potentially disqualifying condition.

Under AG ¶ 25(c) “illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia” is also potentially disqualifying. For ten years Applicant purchased marijuana and possessed drug paraphernalia. He admitted that he did so on many occasions. This disqualifying condition applies.

The guideline also includes examples of conditions that could mitigate security concerns arising from drug involvement. Under AG ¶ 26 (a), the disqualifying conditions may be mitigated where Athe 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.^o Applicant’s illegal use occurred numerous times and as recent as 2007 (after completing his security clearance application). I do not find that this mitigating condition applies.

Under AG ¶ 26 (b), the disqualifying condition may be mitigated 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, Applicant provided no additional information in response to the FORM other than his comment that he had “nothing to add.” Also, he has not had a sufficient period of abstinence for mitigation. In addition, his comments regarding his family do not convince me of his future intentions to refrain from use of illegal drugs in light of his use of drugs as recent as 2007 with his father.

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. Applicant has been employed for many years with his current employer. He has no documented problems at work and has received promotions. He is now engaged and will start a family. He wants to provide a secure environment for his family.

Applicant has used, sold and purchased marijuana for more than ten years. He promised to stop in 2006 but instead smoked with his father in May 2007. He acknowledged that he made bad decisions. He does not excuse his behavior. His drug use is recent. He is a mature adult. Applicant does not convince me that his poor judgment is not likely to recur. Applicant has not met his burden of proof in this case.

Overall, the record evidence leaves me with questions and doubts as to Applicant’s eligibility, judgment, and suitability for a security clearance. For all the reasons discussed above, I conclude Applicant has not 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:	AGAINST APPLICANT
Subparagraph's 1.a-1.d:	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.

Noreen A. Lynch
Administrative Judge