



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 07-16357
)	
Applicant for Security Clearance)	

Appearances

For Government: James F. Duffy, Esq. Department Counsel
For Applicant: Pro se

September 26, 2008

Decision

MASON, Paul J., Administrative Judge:

Applicant submitted his Security Clearance Applications (SCAs) on June 8, 2007. On March 3, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under drug use (Guideline H), and personal conduct (Guideline E). The action was taken pursuant to 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 made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant submitted his answer to the SOR on March 26, 2008. DOHA issued a notice of hearing on July 28, 2008, and the hearing was held on August 12, 2008. At the hearing, two exhibits (GE 1 and GE 2) were admitted in evidence without objection to support the government's case. Applicant testified and offered three exhibits. (AE A through AE C) Department DOHA received a copy of the hearing transcript on August

19, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Rulings on Procedure

Attached to Applicant's one page is three-page attachment that chronicles his drug history. This document is being admitted in evidence as AE D, sworn to on March 26, 2008, the same day as Applicant's answer.

Findings of Fact

The SOR contains two allegations under the drug involvement guideline, and one allegation under the personal conduct guideline. Applicant admitted all SOR allegations.

Applicant is 19 years old, single, with no children. Applicant is a co-op (work-study) student at a local university. As a co-op student, Applicant is employed by the university in alternating semesters to work on classified projects that the university research institute has with various user agencies such as the United States Air Force (USAF). Applicant should receive his degree in computer science in 2009. He seeks a security clearance.

Drug Involvement

Some time in December 2006, Applicant was 17 years old and at home on Christmas holiday break from his first year at the university. His friend (two years older than he) came to his home and offered him marijuana. Applicant had known this individual for six years, and did not consider ingesting marijuana to be anything significant, particularly after hearing the friend minimize the drug's effect. Applicant used the drug briefly and found the drug made him loose and happy.

On December 28 or December 29, 2006, Applicant was at home when his friend offered him some marijuana. In the company of a third person, they smoked marijuana in a pipe.

In May 2007, Applicant was hired by the research institute of the university. In June 2007, after speaking with his supervisor who told him to tell the truth, Applicant completed his security clearance questionnaire (SCA, GE 1) and disclosed his drug use in December 2006 as required. (Tr. 13-15)

At home during summer break (July 4, 2007) from the university, Applicant (age 18) used marijuana a third time (Tr. 28) with his friend. They used marijuana (from a pipe) during a two-hour car ride in the friend's car. He liked the sensations he felt from using the marijuana. (Tr. 21) Later in July, Applicant learned he had been denied an interim clearance by his current employer.

Some time later in July 2008, Applicant talked with the security officer and his supervisor about his previous drug use. He also advised his parents and girlfriend. Applicant expressed to his family and friends that he would not let drugs be a part of his life. (Tr. 16) While he still sees his friend (with whom Applicant used drugs on three previous occasions) on an irregular basis, Applicant has never used drugs with him again. (Tr. 16) Applicant attributes his marijuana use to underestimating the long-term consequences of drug use on health and getting a job where a security clearance is required. (Tr. 37; AE D)

Personal Conduct

After completing his SCA on June 8, 2007, Applicant used marijuana in July 2007. Then, he was notified that his interim security clearance had been denied based on his drug use in December 2006.

Character Evidence

An official was on the interview team that investigated Applicant's employment qualifications in January 2007. The official was impressed with Applicant's character and his technical background. In July 2007, the official became Applicant's supervisor. In the performance period of January to May 2008, Applicant received an outstanding performance rating based on his positive contributions in improving the user interfaces for the core business codes. (Tr. 44) Even though his supervisor is aware Applicant used marijuana, he still recommends him for a position of trust. Applicant has a very good grade average at the university. As noted, his performance evaluation is very respectable. Applicant volunteered for a drug test in August 2008; the results were negative. (AE A)

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 flexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's ultimate adjudicative goal is a fair, impartial and common sense decision. According to the AG, the entire process is a careful, thorough evaluation 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. Where there is reasonable doubt concerning persons to be considered for classified

information, that doubt must be resolved in favor of national security. 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 is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock responsibility between an applicant and the federal government. 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.

Analysis

Drug Involvement (DI)

24. *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 or regulations.” AG ¶ 24

Applicant used marijuana twice in December 2006 and once in July 2007. Even though he never harvested the drug, purchased the drug or sold the drug, his conduct is disqualifying under the drug involvement (DI) guideline. DI disqualifying condition (DC) 25.a. (*any drug abuse*) and DI DC 24.c. (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia*) apply.

DI mitigating condition (MC) 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*) provides limited mitigation in Applicant’s case. While he used the drug twice in December 2006, and once in July 2007, his use was infrequent. Applicant fully realizes he made a mistake by misjudging the seriousness of drug use on his chances of receiving a security clearance. The drug use occurred during Applicant’s late teenage years. The experimental drug use does not cast doubt on Applicant’s current reliability

as observed by his supervisor. See, AE C. Though Applicant meets only one of the elements of DI MC 26.b. (a 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 are used, (3) *an appropriate period of abstinence*, and a signed statement of intent with automatic revocation of clearance for any violation), he has convinced me that his education and career are too important to jeopardize by continuing to use drugs. Applicant understands that distancing himself from drug users and situations where drugs are used is an important way for him keep drugs out of his future. I find for Applicant under the DI guideline.

Personal Conduct (PC)

15. *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.” AG ¶ 15

PC DC 16. c. (*credible adverse information in several adjudicative issue areas that is sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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*) applies. Using marijuana after executing a SCA demonstrates poor judgment under PC DC 16.c. because the applicant is essentially showing by his conduct that he is against the DoD drug policy. If he is willing to defy the law by using drugs regardless of the amount or time of use, then there is a fairly good chance he may apply the same sort of attitude toward security rules he chooses not to follow. The government does not have to take this risk.

Applicant exercised good judgment by informing his parents and girlfriend in July 2007 about his drug use and his decision not to use drugs again. His good judgment extends to October 2007 when he informed the government in that he had used marijuana in July 2007. Applicant’s experimental drug use in December 2006 and July 2007 is mitigated by his disclosure actions and solid character evidence. The evidence presented under PC MC 17.c. (*the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment*) supports an ultimate finding in Applicant’s favor under the PC guideline.

Whole Person Concept (WPC)

The AG indicates the ultimate determination of whether to grant a security clearance must be an overall common sense judgment based upon careful

consideration of the whole person concept. Nine general policy factors define the WPC. They are: (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 the participation is voluntary; (6) the presence or absence of rehabilitation; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and, (9) the likelihood of continuation or recurrence.

When Applicant first used marijuana in December 2006, he was 17 years old, a critical time in Applicant's teenage life where he, like most teenagers, is exposed to peer pressure by friends who are about the same age. History tells us that peer pressure under these circumstances dominated by idle time usually leads to frolics that involve the wrong side of law. If they have not already done so, teenagers confront some degree of pressure to use drugs. Unfortunately, Applicant yielded to the pressure on three occasions.

Applicant should not have smoked the marijuana. Yet, after he was denied an interim clearance for his drug use in December 2006, Applicant used drugs on a third occasion in July 2007. Clearly, there are obvious reasons Applicant should not have used the drug after being denied the interim security clearance. Fortunately, Applicant told his family and friends, and embarked upon a path that reinforces his decision not to use drugs in the future. I believe he warrants another opportunity to make evident his security worthiness. This conclusion is based on his documented honesty, his forthright disclosures, and his compelling character evidence from his university transcript and his supervisor. The DI and PC guidelines are resolved in his favor.

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 (Drug Involvement, Guideline H): FOR APPLICANT

Subparagraph 1.a. For Applicant

Subparagraph 1.b. For Applicant

Paragraph 2 (Personal Conduct, Guideline E): FOR APPLICANT

Subparagraph 2.a. 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.

Paul J. Mason
Administrative Judge