



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



In the matter of:)
)
) ISCR Case No. 07-18220
)
)
Applicant for Security Clearance)

Appearances

For Government: Erik Borgstrom, Esquire, Department Counsel
For Applicant: *Pro Se*

February 20, 2009

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, testimony, and exhibits, I conclude that Applicant mitigated security concerns under Guideline G, Alcohol Consumption, but failed to mitigate the Government’s security concerns under Guideline H, Drug Involvement. His eligibility for a security clearance is denied.

Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) on May 31, 2007. On September 24, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H, Drug Involvement and Guideline G, Alcohol Consumption. 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.

On October 13, 2008, Applicant answered the SOR in writing and elected to have a hearing before an administrative judge. The case was assigned to me on December 15, 2008. I convened a hearing on January 21, 2009, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and introduced eight exhibits, which were marked Ex. 1 through 8 and admitted to the record without objection. Applicant testified on his own behalf, called one witness, and introduced 17 exhibits, which were marked Exs. A through Q. Applicant's exhibits were admitted to the record without objection.

DOHA received the transcript (Tr.) of the hearing on January 28, 2009.

Findings of Fact

The SOR contains five allegations of disqualifying conduct under AG H, Drug Involvement (SOR ¶¶ 1.a. through 1.e.) and three allegations of disqualifying conduct under AG G, Alcohol Consumption (SOR ¶¶ 2.a through 2.c). In his Answer to the SOR, Applicant admitted the five Guideline H allegations and two of the three Guideline G allegations. He also provided additional information. Applicant's admissions are admitted as findings of fact.

Applicant is 23 years old and single. In May 2008, he earned a bachelor's degree in mechanical engineering. From approximately August 2003 until July 2007, Applicant worked intermittently as an intern for a defense contractor during summers and academic breaks. In his employment as an intern, he did not hold a security clearance but worked in program areas of military significance. Additionally, in August 2003, when he began work as an intern for his employer, Applicant agreed to be bound by the employer's code of business conduct and ethics, including its drug-free workplace policy, which applied to all full-time and part-time employees. (Ex. 1; Ex. 8; Tr. 78-84.)

During his senior year in college, from August 2007 until May 2008, Applicant worked on a research team at his university to redesign a landing gear for an unmanned aircraft. The sponsor of the research project was the defense contracting firm which employed him as an intern and which currently employs him. When he graduated from college, the defense contracting firm hired him as a program specialist. At the time of his hearing, Applicant had worked full-time for the defense contractor since June 2008. He seeks a security clearance. (Ex. G; Tr. 112, 131.)

Applicant began using and experimenting with illegal drugs when he was 15 years old. Between November 2001 and January 2007, he used marijuana 150 times. Between the ages of 16 and 18, he used marijuana two times a week. In December 2002, when he was about 17 years old, he used "mushrooms." In March 2003, Applicant's parents suspected he was using illegal drugs. They took him to a drug rehabilitation center to be tested. He tested positive for marijuana use. Thereafter, he entered a drug and alcohol counseling class for adolescents that met two or three times a week for two weeks. When he completed the drug and alcohol counseling program,

Applicant said to himself: "I need to stop, or at least severely limit my use." He remained drug-free for one year. (Ex. 1; Tr. 64, 68, 88-89.)

In 2004, he used marijuana four times. He also used cocaine once in June 2004 after graduating from high school. After he used cocaine, he felt guilty and remorseful. He avoided the people with whom he used cocaine. However, he used marijuana again in 2005, and, in December 2005, when he was about 20 years old, he used the prescription drug Adderall illegally. After his illegal use of Adderall, he resolved never to use illegal drugs again. (Tr. 64-68, 86-87.)

In January 2007, when he was 21 years old, he traveled with a friend to a European country and, while there, used marijuana twice. He thought his marijuana use was legal in the European country. After his use of marijuana in January 2007, Applicant returned to his duties as an intern with his current employer. (Tr. 64-68, 83, 85, 89.)

Applicant's parents knew of his illegal use of marijuana in 2003. After receiving the SOR in the fall of 2008, he told them of his use of mushrooms in 2002 and his illegal drug use since 2003. Applicant no longer has contact with the individuals with whom he used illegal drugs. (Tr. 66, 90-92.)

Applicant began consuming alcohol at the age of fifteen. Although his use of alcohol has impaired his judgment in the past, he is confident he knows how to use alcohol prudently and safely. In October 2007, he responded to questions from an authorized investigator about his drinking habits. At that time, he stated that he drank alcohol about once a week and drank to intoxication about once a month. At his hearing, he stated he did not drink to intoxication as much as he did when he was in college. He drank to intoxication at his college graduation in May 2008, at Thanksgiving in November 2008, and on New Year's Eve, 2008. He has not been diagnosed as an alcohol abuser or as alcohol dependent. (Ex. 2 at 5; Tr. 96-100.)

In May 2006, when he was 20 years old, Applicant was in a bar. He was asked by a police officer to show his personal identification to establish that he was old enough to drink legally. Applicant presented the officer with an identification card that was not his but which belonged to a person who was legally eligible to drink. The officer cited him for False Documentation. Applicant was fined and sentenced to 16 hours of community service. (Ex. 6: Tr. 102-104.)

In September 2006, Applicant was arrested for underage drinking and charged with Purchase/Possess Alcohol, a misdemeanor offense. He paid a fine and took a two-month alcohol safety awareness program from October 2007 to December 2007. He was not permitted to drink alcohol during the alcohol safety awareness program. (Ex. 4; Tr. 100-102, 104-105.)

Applicant called a senior program manager from his employer to testify as a witness on his behalf. The witness stated that he and Applicant were friends. He said he

had known Applicant personally and professionally for six months. He further stated that Applicant was honest, possessed an outstanding character, and was an excellent example to all other new employees at the firm. He stated that Applicant told him of his drug use three or four months before the January 21, 2009 security clearance hearing. (Tr. 130-136.)

Applicant's witness also provided a letter of character reference. In addition, Applicant submitted eight other letters of character reference on his behalf. All of the letters of character reference praised Applicant as an outstanding young man of superior character who was honest, reliable, and trustworthy. Applicant stated that his witness was the only one of the nine persons who wrote letters of character reference who was fully aware of the specific disqualifying conduct alleged on the SOR. (Ex. A through I; Tr. 92-94.)

Applicant also spoke highly of his own character, and he noted that the nine letters of character reference "reveal my true integrity, loyalty, and enthusiasm, as an overall good person, and dedication to a healthy lifestyle." (Tr. 14.)

Applicant emphasized his increased maturity, and he reported his involvement in numerous community activities and charitable service projects. His plans for the future include paying off his student loans, marriage, and a graduate degree in business administration. (Ex. Q; Tr. 14-18.)

Applicant tested negative in two random drug tests administered by his employer in May 2008 and August 2008. Additionally, he provided the following signed statements:

Statement of intent: January 2007 was the last time I used a drug. I have since pledged to remain disassociated from any type of drug using associates or contacts, that I have change[d] and will avoid the environment where drugs were and are used, and that I will remain abstinent in the future. Again, I am trustworthy enough to protect classified information. (Signed and notarized October 13, 2008)

For clarification purposes:

I understand that a violation of my above agreement would result in an automatic revocation of clearance. (Signed and dated January 20, 2009.

(Ex. M; Ex. N; Ex. O)

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, the administrative judge applies these guidelines 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

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness 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(a) defines drugs as "mood and behavior altering substances." The definition of drugs includes "(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."¹ AG ¶ 24(b) defines drug abuse as "the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction."

The relevant Guideline H security concern in this case is referenced at AG ¶ 25(a) of the Drug Involvement guideline. The record shows that Applicant's admitted illegal use of marijuana began in November 2001, when he was 15 years old and continued until 2007, when he was 21 years old. During that time he also used cocaine once, Adderall once, and mushrooms once. He used illegal drugs while employed by a federal contractor. In 2003, his parents, who suspected he was using drugs, took him to a drug treatment center for a drug test. When he tested positive, he was placed in a drug counseling program for about two weeks. After completing the drug counseling program, he returned to drug use after one year. This conduct casts doubt on his reliability, trustworthiness, and good judgment. It also raises security concerns about his ability or willingness to comply with laws, rules, and regulations. I conclude that Applicant's illegal drug use raises security concerns under AG ¶ 24 and AG ¶ 25(a).

Two Guideline H mitigating conditions might apply to the facts of Applicant's case. If Applicant's drug use happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on his current reliability, trustworthiness, or good judgment, then AG ¶ 26(a) might be applicable in mitigation. If Applicant demonstrated an intent not to abuse any drugs in the future by disassociation from drug-using associates and contacts, changing or avoiding the environment where drugs were used, abstaining from drug use for an appropriate period, and signing a statement of intent with the automatic revocation of his security clearance for any violation, then AG ¶ 26(b) might be applicable.

The record shows that Applicant's use of mushrooms, cocaine, and Adderall was infrequent and happened between 2002 and 2005. These brief episodes of drug

¹ Schedules I, II, III, IV, and V, as referred to in the Controlled Substances Act, are contained in 21 U.S.C. § 812(c). Marijuana is a Schedule I controlled substance. See *also* *Gonzales v. Raish*, 545 U.S. 1 (2005) (discussing placement of marijuana on Schedule 1.) Mushrooms is the street name for psilocybin or psilocin, which is a Schedule I controlled substance. See *United States v. Hussein*, 351 F.3d 9, 16 (1st Cir. 2003) (mushrooms are a plant which may contain the Schedule I(c)15) and 1(c)16) controlled substance psilocybin or psilocin. Cocaine is a Schedule II controlled substance.

use occurred under circumstances that are not likely to recur. I conclude that AG ¶ 26(a) applies to SOR ¶¶ 1.c., 1.d., and 1.e.

Applicant's marijuana use, on the other hand, was more intense and covered a time span of over six years, from 2001 to 2007. It was the drug Applicant returned to after resolving at least twice to stop using drugs. Applicant's use of marijuana was of sufficient duration to demonstrate a consistent lifestyle choice, despite cautionary drug counseling. Applicant stated he had disassociated from drug-using associates and avoided environments where drugs were used. He provided a signed statement of intent to abstain from all drug use, with automatic revocation of his security clearance for any violation. However, while Applicant stated he had not used marijuana since January 2007, he failed to provide evidence corroborating his statement about his abstinence from friends and others who knew him socially during the time of his drug use. Applicant stated he had changed his behavior and activities after his last use of marijuana in January 2007 and his subsequent decision to abstain from illegal drugs. These decisions are still somewhat recent and the lifestyle change is of insufficient duration to demonstrate a positive and permanent change in behavior. I conclude that AG ¶¶ 26(a) and 26(b) do not fully apply in mitigation to the security concerns raised by Applicant's use of marijuana.

Guideline G, Alcohol Consumption

Guideline G, Alcohol Consumption, applies in this case to a determination of eligibility for access to classified information. Under Guideline G, "[e]xcessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability."

I have considered all of the Alcohol Consumption Disqualifying Conditions. I have especially considered AG ¶¶ 22(a) and 22(c).²

Applicant admitted alcohol consumption from age 15, and he admitted that his past consumption had impaired his judgment. In May 2006, when he was 20 years old, Applicant was cited for presenting false documentation to a police officer. Four months later, in September 2006, he was arrested and charged with under age possession of alcohol. He paid a fine and, in 2007, enrolled in an alcohol safety awareness program. These facts raise security concerns under AG ¶¶ 22(a) and 22(c).

The Guideline G disqualifying conduct could be mitigated under AG ¶ 23(a) if "so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment." The disqualifying

² AG ¶ 22(a) reads: "alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent." AG ¶ 22(c) reads: "habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent."

conduct could also be mitigated under AG ¶ 23(b) if “the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser).” If “the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress,” then AG ¶ 23(c) might apply. Finally, mitigation might be possible under AG ¶ 23 (d) if “the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.”

Applicant’s alcohol-related conduct occurred in adolescence and as a college student, when he was not old enough to drink alcohol legally. Now that he is of legal age to consume alcohol, he drinks alcohol about once a week. He drank to intoxication at his college graduation, Thanksgiving, and on New Year’s Eve. As an adult, he has not been cited for alcohol offenses, and he claims uses alcohol responsibly. He has not been diagnosed as alcohol dependent or as an abuser of alcohol. I conclude that AG ¶ 23(a) applies in mitigation to the facts of Applicant’s case and that AG ¶¶ 23(b), 23(c), and 23(d) do not 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) 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. To his credit, Applicant himself

provided information about his drug and alcohol use that was alleged on the SOR. I conclude that Applicant's underage alcohol consumption has been mitigated by the passage of time. Additionally, I conclude that his one-time uses of mushrooms in 2002, cocaine in 2004, and Adderall in 2005 were isolated uses of illegal drugs. However, he used marijuana 150 times between 2001 and January 2007. After receiving drug counseling in 2003, he continued his use of marijuana. After his cocaine use in 2004, and after his use of Adderall in 2005, he resolved to stop using drugs, but returned, after time, to using marijuana. His last use of marijuana, in 2007, occurred two years after he resolved not to use illegal drugs again.

Additionally, Applicant used marijuana while employed by a government contractor and after he committed to his employer's code of business conduct and ethics, including its drug-free workplace policy. His intermittent but repetitive marijuana use suggested a lifestyle choice. I conclude that insufficient time has passed to determine if Applicant will abstain from illegal use of marijuana in the future.

As a part of this whole person analysis, I have also considered the fact that Applicant requested letters of recommendation from nine individuals and apprised only one of those individuals of the totality of the SOR allegations of drug involvement and alcohol consumption. It is not clear what the other eight individuals might have written about Applicant if he had informed them of the facts alleged in the SOR. Because those assessments of his character were not based upon knowledge of the conduct that gave rise to the SOR allegations, they have less credibility, and I gave them less weight.

Applicant's resolve to abstain from illegal drug use will likely be demonstrated with the passage of time. He can reapply for a security clearance one year after the date that this decision becomes final. If he wishes, he can produce new evidence that addresses the Government's current security concerns.

Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant mitigated security concerns related to alcohol consumption but failed to mitigate 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 1.a: | Against Applicant |
| Subparagraph 1.b: | Against Applicant |

| | |
|---------------------------|---------------|
| Subparagraph 1.c: | For Applicant |
| Subparagraph 1.d: | For Applicant |
| Subparagraph 1.e: | For Applicant |
| Paragraph 2, Guideline G: | FOR APPLICANT |
| Subparagraph 2.a: | For Applicant |
| Subparagraph 2.b: | For Applicant |
| Subparagraph 2.c: | 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. Eligibility for access to classified information is denied.

Joan Caton Anthony
Administrative Judge