



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 08-00321
)	
Applicant for Security Clearance)	

Appearances

For Government: Thomas Coale, Esquire, Department Counsel
For Applicant: *Pro Se*

April 30, 2008

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

On January 30, 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. 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 February 21, 2008, and elected to have his case decided on the written record. Department Counsel submitted the government’s file of relevant material (FORM) on March 13, 2008. The FORM was mailed to Applicant on March 20, 2008, and it was received on March 28, 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 submitted an additional statement. Department Counsel had no objection. The case was assigned to me on April 29, 2008.

Findings of Fact

Applicant admitted the sole allegation 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 a 22-year-old consultant who began employment with a federal contractor in May 2004. Applicant lists on his security clearance application (SCA) that he attended college from August 2003 to May 2007. Although he could have worked full time and also attended college, it is unlikely he could have completed college in four years while working full-time. It is likely he worked part-time or during the summers while attending college. He completed his SCA in September 2007, a few months after graduating from college. Applicant earned a bachelor's of science degree in computer science.¹

Applicant used marijuana on approximately 15 occasions from February 2006 to August 2007. Applicant provided little evidence regarding his drug abuse. In response to the FORM he stated his use was while he was attending college. His last use was on August 10, 2007, and prior to then it was in April 2007. He stated in a written statement: "The August 10th event I consider to be a slip up on my part. After April I had intended to stop smoking and had done so successfully until August."² When referring to the period between April and August 2007, he further stated: "Although I might have been out of school at this point, I still went down to the University of [State] on weekends for a few months after I graduated. This was because most of my friends still lived down at school. The August 10th slip up occurred down at school while still in the college environment."³ He claimed the only time he smoked marijuana was when he was at college and with two people.

Applicant stated that he did not plan on smoking marijuana ever again. He has offered to submit to random drug testing. He stated he has distanced himself from college. He stated: "I do not go down there on weekends anymore as my close friends have all graduated. Also, I have not hung out with any of my friends that smoked in quite a while. Due to these facts I have not even had the opportunity to smoke marijuana since August 10th, 2007."⁴

¹ Item 5.

² Response to FORM.

³ *Id.*

⁴ *Id.*

On his SCA, in response to his drug abuse, he stated: “I do not intend on ever doing Marijuana or any illegal drug for that matter again. There are many reasons for this some of which include: [n]ot in college anymore, [l]egal penalties, I have a full time job now, and also my health. Marijuana also caused me anxiety which I do not desire to experience again.”⁵

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

⁵ Item 5.

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 especially considered (a) (“any drug abuse”) and (c) (“illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution, or possession of drug paraphernalia”). Applicant admitted he used marijuana from February 2006 to August 2007. Obviously in order for him to use the drug he had to possess it. Therefore, I find both 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”). It is unclear whether Applicant was actually working for his employer when he was using drugs. Based on the dates he provided in his SCA it appears he was employed during this time, but he clearly discusses his use was during his college years. Even if he was still in college and not working during the majority of time he used drugs, it is clear that approximately six weeks prior to completing his SCA he again used marijuana. Applicant’s statements concede his use was while attending or visiting his college. He comments that he slipped up and “has not even had the opportunity to smoke marijuana since August 10th, 2007.” It has been a mere eight months since Applicant last used marijuana. Although

he may now be committed to abstinence, he admitted he failed at his first attempt. He appears to be taking appropriate steps to reinforce his renewed commitment to refraining from drug use. He is working full-time. He has not associated with those he used drugs with in the past, at least since August 2007. He has not been back to his college since August 2007. In addition, he has signed a statement of intent not to use illegal drugs in the future. Therefore, I find that mitigating condition (b) partially applies.

The length of time Applicant has abstained from using illegal drugs is less than one year. Despite Applicant's promises to not use illegal drugs in the future, he admitted he attempted to abstain in April 2007 and failed. He has abstained since August 2007. At this juncture, it is too early to conclude Applicant's commitment to abstinence is permanent. I cannot find that his behavior happened so long ago, was infrequent or that under the circumstances it is unlikely to recur. Consequently, I cannot find (a) applies.

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 22 years old and a recent college graduate. He used marijuana 15 times over a period of a year and a half leading up to his full time employment. He states he is committed to abstinence, but admitted he has slipped up. Although his drug use could be described as "youthful indiscretion" it is too soon to conclude he has put that period of his life behind him. Without a significant period of sustained abstinence I am unable to conclude Applicant has successfully mitigated the security concerns raised. 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.

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

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