



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 08-01955
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn, E. Hoffman, Esq. Department Counsel
For Applicant: Pro se

September 24, 2008

Decision

MASON, Paul J., Administrative Judge:

Applicant submitted his Security Clearance Applications (SCAs) on March 13, 2007 and May 21, 2008. On June 30, 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 July 17, 2008. DOHA issued a notice of hearing on August 28, 2008, and the hearing was held on September 11, 2008. At the hearing, four exhibits (GE 1 through GE 4) were admitted in evidence without objection to support the government's case. Applicant testified and offered four exhibits. (AE A through AE D) Department DOHA received a copy of the hearing

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

Findings of Fact

The SOR contains three allegations under the drug involvement guideline, and one allegation under the personal conduct guideline. Applicant admitted SOR 1.a. and 1.b., but denied SOR 1.c. and 2.a.

Applicant is 21 years old, single, with no children. Applicant is a co-op student and a teaching assistant 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 has with various user agencies such as the United States Air Force (USAF). In December 2009, he anticipates receiving his college degree in computer science with a speciality in networking. He seeks a security clearance.

Drug Involvement

At the age of 19 (October 2006), Applicant used marijuana two times at parties two weeks apart. His first use of the drug was triggered by peer pressure and curiosity. The drug had no effect on him. The second time, two weeks later, he used the drug at the second party because he had been told that marijuana usually has no effect the first time the drug used. During the second use, he experienced a dry mouth, hunger, and panic sensations.

In his first security clearance application (GE 1, SCA) dated February 9, 2007, Applicant disclosed the use and stated, "I have tried marijuana, but I never intended to go out and get some for myself. I tried it at a party. I have no[t] intentions to ever try it again."

On September 5, 2007, Applicant recounted his October 2006 experience with marijuana in an interview with an investigator.¹ He described a third time (age 20) in which he used the drug in July 2007 during a study-abroad program in a European country. He was bar hopping with friends and new acquaintances. At some point in the evening after consuming alcohol to excess, Applicant yielded to an offer to smoke marijuana. He experienced the same effects as he had the second time he used the drug in October 2006. As he had stated in his February 2007 SCA, he reiterated his intention in the September 2007 interview/statement, and at the hearing (Tr. 44) not to use marijuana in the future. He also indicated he had never purchased or sold the drug.

Applicant mentioned in his answer to the SOR that had he known about his interim clearance (SOR 1.c.), he would not have used the marijuana in July 2007. He also asserted in his answer that marijuana use is legal in the European country where

¹ On May 12, 2008, Applicant swore the contents of the September 2007 interview were true and accurate to the best of his knowledge and belief.

he used the drug. His drug use in July 2007 forced him to rethink his drinking practices so that he would not face the temptation to use drugs in the future.

Applicant no longer associates with drug users. (Tr. 58) Neither his family nor his girlfriend use drugs. (Tr. 55)

Considering the entire record, including Applicant's demeanor at the hearing, his use of marijuana within a short period of time after he stated he would not use the drug dilutes his credibility in degree.

Personal Conduct

During a study-abroad program, Applicant used marijuana in a European country in July 2007 while holding an interim security clearance.

Character Evidence

Applicant was certified in November 2004 after reaching the highest rank in a young mens organization. He received formal initiation into a nationally recognized scholastic fraternity in January 2007. Applicant received official recognition from the associate dean of his university for his outstanding, freshman academic record. His present cumulative, scholastic average is 3.81, based on a perfect 4-point scoring system; The only grade below a "B" rating is 'probability and statistics.' (AE C)

Applicant received special recognition from the USAF for his contributions to a project in early 2008. Applicant's supervisor considers Applicant to be an outstanding, junior software engineer with a bright future.

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. AG ¶ 2b. 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 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.”

Applicant’s drug involvement falls within the scope of 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*) based on Applicant’s use and possession of marijuana in October 2006 and July 2007. To use the drug on three occasions, Applicant had to take control of the drug so that he could ingest it. Applicant’s expressed intention not to use marijuana again in his February 2007 SCA cannot be blindly accepted because five months after making the claim, he used the drug on a third occasion.

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*) conveys mitigation in Applicant’s case. While he used the drug twice in October 2006, and once in July 2007 under the same circumstances, and producing the same effect, the use can only be considered infrequent. Given his forthright disclosure of his July

2007 marijuana use, his job performance, and his scholastic record, his past drug use does not cast doubt on his current trustworthiness and good judgment.

Though Applicant does not meet all the elements of DI MC 26.b. (a demonstrated 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 no longer associates with drug users. Considering his isolated marijuana use in October 2006 and July 2007, his straightforward disclosure of his July 2007 use, and his favorable character evidence, the DI guideline is resolved in his favor.

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.”

Applicant clearly used poor judgment by declaring in October 2006 he would not use drugs again, and then use drugs about nine months later in July 2007, in a foreign country where marijuana use is legal. His use falls within 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*) and PC DC 16.e. (*personal conduct, or concealment of information about one’s conduct, that creates vulnerability to exploitation, manipulation, or duress, such as (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that county 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*).

Using marijuana constitutes credible adverse evidence in several adjudicative issue areas that could support a negative whole person assessment under PC DC 16.c. In addition, using drugs in another country where drug use is legal may serve as a basis for exploitation and pressure. To Applicant’s credit, he fully notified the government and his parents about his marijuana use domestically and in the foreign country. Given Applicant’s favorable character evidence and impressive work performance, I conclude that the drug use sufficiently infrequent, and that it is unlikely to recur. 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*) applies. Applicant’s disclosures of his drug use to his parents and the government dramatically

reduce his chances of being vulnerable to coercion, and invoke PC MC 17.e. (*the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress*). The PC guideline is resolved in his favor.

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.

The DI and PC guidelines that have been found in his favor, must still be evaluated in the context of the whole person model of the Directive. Applicant was 19 in 2006 when he first used marijuana. History shows that teenagers are bombarded with all types of temptation triggered by group pressure. To achieve status in the group, the individual does what it takes to maintain his "membership" status. Using drugs is usually a way to attain status by individuals who are age 19. Applicant's marijuana use at 19 is extenuated by his age. Had he stood by initial intention to refrain from marijuana use, then there would be no need to pursue the inquiry. However, at age 20 he used marijuana again in July 2007 under circumstances that discredit his stated intention nine months earlier not to use drugs.

However, Applicant's good-faith and prompt disclosure of his drug use in September 2007, while maintaining his scholastic achievements and job accomplishments, I am confident he will follow his intention to forego all drug use in the future. He has a lifelong affiliation with a worldwide boy's organization that generally provides a strong foundation for most boys to succeed in life. Applicant's achievements at the university show me the ideals of the boy's organization are working effectively in Applicant's life. Overall, the positive character evidence provides sufficient justification to find for Applicant under the DI and PC guidelines.

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
Subparagraph 1.c.	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