



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-02197
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Candace Le'i, Esquire, Department Counsel
For Applicant: *Pro se*

September 12, 2008

Decision

CURRY, Marc E., Administrative Judge:

On May 14, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines H, Drug Involvement, and E, Personal Conduct. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) 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 on June 2, 2008, admitted all of the allegations, and requested a hearing. The case was assigned to me on July 10, 2008. DOHA issued a notice of hearing on July 23, 2008 scheduling it for August 18, 2008. During the hearing, I received three government exhibits and Applicant's testimony. At Applicant's request, I left the record open at the close of the hearing to allow him to submit exhibits. Applicant timely submitted nine exhibits (A-I) that I incorporated into the record. DOHA

received the hearing transcript (Tr.) on August 25, 2008. Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant is a 43-year-old, married man with a 14-year-old child, and two, five-year-old twin children. He has been married since 1992.

Applicant graduated from college in 1995 with a bachelor's degree in science and architecture (Exhibit 1). Since 2000, he has worked for an architecture firm. According to his supervisor, he is a "hard-working, detail-oriented individual who continues to take on assignments of increasing responsibility with great success" (Exhibit A).

Applicant has been smoking marijuana for nearly 28 years. He began at age 16 and smoked it daily through age 28 (Tr. 21). After getting married, his use decreased to two to three times per year (Exhibit 1 at 29). On these occasions, he smokes it with friends who bring it with them when they visit his home (Tr. 19).

On December 11, 2007, approximately a month after Applicant completed a security clearance application, he was interviewed by a security clearance investigator. When asked about his marijuana consumption, he stated that he had no intention of using it again, but would probably smoke some if his friends brought some to his home (Answer).

Three weeks later, on New Year's Eve, Applicant's friends visited him, brought some marijuana, and Applicant sampled some of it (*Id.*). He then resolved to quit using marijuana. He has made similar resolutions five times before (Tr. 23). Applicant attributes his continued marijuana use to peer pressure (Tr. 34).

Applicant has not used marijuana since December 2007, and does not intend to use it again. His wife never approved of his past use, and he wants to set a good example for his daughter, who is now a teenager.¹ He is now more conscientious about the risks to his career that continued use could pose.

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.

¹She does not know about his past use.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. According to AG ¶ 2(c), the entire process is a 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. 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.

Analysis

Drug Involvement

Under this guideline, “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” (AG ¶ 24). Applicant’s 28-year history of marijuana, spanning from his teenage years to December 2007, three weeks after he was interviewed by a security clearance investigator, triggers the application of AG ¶¶ 25(a), any drug abuse, 25(c), “illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia,” and 25(h), “expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use.”

I have considered the mitigating conditions and conclude none apply. Applicant, a 43-year-old man, attributed his continued use into middle-age to peer pressure, something normally a problem for teenagers. His last episode of marijuana use corresponded with a vow to quit, but he has made similar vows in the past. Also, it occurred less than a month after he met with a security clearance investigator. Given the length of time that he abused marijuana in the past, the recency of his last use, and his nonchalant attitude he held as recently as November 2007 about the seriousness of marijuana use, it remains a security concern.

Personal Conduct

“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 (AG ¶ 15). Specifically, Applicant’s conduct triggers the application of AG ¶ 16(e), “personal

conduct . . . that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing . . . " None of the mitigating conditions apply for the same reasons set forth in the Drug Involvement section of the Decision, above.

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."

Applicant deserves credit for disclosing the extent of his marijuana use. He is committed to his job. These positive attributes are outweighed by the frequency and extent of his past marijuana use. After evaluating this case in the context of the whole person concept, I conclude that it is not clearly consistent with the national interest to grant Applicant access to classified information.

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
Subparagraphs 1.a - 1.d:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MARC E. CURRY
Administrative Judge