



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-05006
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel
For Applicant: *Pro Se*

February 11, 2009

Decision

WESLEY, Roger C., Administrative Judge:

History of Case

On July 31, 2008, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, and Department of Defense (DoD) Regulation 5200.2-R, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on August 20, 2008, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on November 24, 2008. Within the time permitted, Applicant submitted supplemental information in response to the FORM. The case was assigned to me on January 6, 2009.

Summary of Pleadings

Under Guideline H, Applicant is alleged to (a) have used marijuana on numerous occasions from 1996 through 1997, (b) have used hallucinogenic mushrooms on at least two occasions: in June 1999 and August 2000, (c) have used marijuana on a frequent basis from September 2001 through February 2008, and (d) occasionally purchased marijuana from September 2001 through February 2008.

For his response to the SOR, Applicant admitted each of the allegations. He claimed he has no intention of using marijuana in the future, not out of concern for his security clearance, but primarily due to his recent marriage and plans to start a family. He claims no intention to resume use of hallucinogenic mushrooms, which he has avoided for eight years. He claims financial responsibility, a solid employment history, and an excellent academic record, which together reflect responsible behavior and an ability to stay focused

Findings of Fact

Applicant is a 27-year-old senior analyst for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are adopted as relevant and material findings. Additional findings follow.

Between September 1996 and 1997, Applicant smoked marijuana on a number of occasions as a high school student. After a brief respite from illegal substance usage, he resumed his use of marijuana. Beginning in September 2001, he continued his use of marijuana through his college enrollment (1999 to 2003). He smoked marijuana (either in pipe form or marijuana cigarette) on a weekly basis for social reasons, usually in his own house, or in a friend's house home (see ex. 5).

After college, Applicant continued to use marijuana on a regular basis, as evidenced by his answers in his e-QIP and summary of his interview with an investigator from the Office of Personnel Management (OPM) (see exs. 4 and 5). For most of the years he smoked marijuana in college and thereafter, he used it once a week on average (see ex. 5).

Throughout the years he used marijuana, he purchased the drug every three months (on average) for his personal use (between 1/8 and 1/4 of an ounce at a time). Applicant last used marijuana in February 2008 and assures he has no intention of using the substance again in the future. He stresses his recent marriage and plans to start a family (independent of his security clearance application) as his principal reasons for making a determination not to use marijuana anymore in the future (ex. 5).

To be sure, the record does not contain any documentary evidence of Applicant's resumption of marijuana use after February 2008. Neither does it contain any documented drug counseling or other corroborating evidence of his decision to permanently abstain from marijuana. One of the friends he identified in his OPM interview as a co-user is also named in his e-QIP as a person he stays in contact with

(compare exs. 4 and 5). Whether this friend has any potential influence over his drug use decisions is not clear.

While in high school he tried hallucinogenic mushrooms once in June 1999 (see ex. 5). He experimented with hallucinogenic mushrooms once more (in August 2000) with a friend at a girlfriend's house before giving up the drug permanently.

In his OPM interview, Applicant assured he never felt dependent on marijuana and had never sought counseling or treatment for his use of marijuana (see 5). He assured he has never encountered any problems at work or at home because of his marijuana use, and has never been arrested or cited for any drug-related offense (ex. 5). Applicant has never been drug-tested.

Applicant is credited with an excellent academic record, and has no reported adverse employment notations in this administrative record (see ex. 5 and Applicant's supplemental reasons to the FORM). Applicant provided no documentation in his behalf to support any further progress in the resolution of his drug usage. He provided no endorsements or performance evaluations either.

Policies

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Drug Involvement

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, and regulations AG ¶ 24.

Burden of Proof

By virtue of the precepts framed by the revised Adjudicative Guidelines, a decision to grant or continue an applicant's security clearance may be made only upon a

threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted facts alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

Analysis

Between 1996 and at least February 2008, Applicant used and purchased marijuana on what must be described as a regular and recurrent basis. His admission to using marijuana through February 2008, and earlier isolated instances of using hallucinogenic mushrooms, raises security concerns about his continued drug use. Not until he answered questions about his prior drug use in his e-QIP in February 2008 did he determine to cease all forms of illegal drug use.

Over a 12-year period, Applicant used marijuana on a virtually continuous basis, (suspending his use of the substance for a two year stretch between 1997 and 1999), and off and on in 2007 before using the substance for a last reported time in February 2008. Applicant admits to purchasing marijuana occasionally to meet his personal needs. With such a recurrent history of frequent marijuana use, and lacking in any reliable track history of abstinence, too much doubt and uncertainty exist to make safe predictable judgments about his ability to avoid recurrent drug involvement.

On the strength of the evidence presented, several disqualifying conditions of the Adjudicative Guidelines for drug abuse are applicable: DC ¶ 25(a), "any drug abuse," DC ¶ 25(c), "illegal possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia," and DC ¶ 25(h), "expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use." Afforded an opportunity to respond to the FORM materials, Applicant clarified his drug use history and reassured his intentions to avoid marijuana use in the future.

Judgment concerns exist over Applicant's continued drug use. He has a lengthy recurrent history of frequent marijuana use and less than a year of demonstrated abstinence.

Considering Applicant's continuous and recurrent history use of marijuana,, considerable time in demonstrated abstinence would be required to mitigate security concerns over his past use of illegal substance (mostly marijuana). At this time, not enough time has elapsed to facilitate safe predictable judgments that he will not return to illegal drug use in the foreseeable future.

Without more time, documented counseling, and/or other corroborating evidence of Applicant's commitments to avoid marijuana in the future, pertinent mitigating conditions covered by AG ¶ 24 are not available to Applicant at this time. MC ¶ 24(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," has applicability to Applicant's limited and aged use of hallucinogenic mushrooms (twice between 1999 and 2000), but no more.

From a whole person perspective, Applicant has established no independent probative evidence in this administrative record to warrant any different conclusions under the whole person concept in the Directive. He has provided no endorsements from supervisors and coworkers with his employer to soften or mitigate any of the drug and judgment concerns associated with his ongoing use of marijuana. His own assurances, while helpful, are not sufficient to draw any hard conclusions about his overall judgment, reliability and trustworthiness.

Taking into account all of the facts and circumstances surrounding Applicant's drug use and judgment lapses, Applicant does not mitigate security concerns related to his drug use and personal conduct issues. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a, 1.c, and 1.d of Guideline H. Favorable conclusions warrant with respect to subparagraph 1.b by reasons of Applicant's isolated use of the drug and the long passage of time.

In reaching my decision, I have considered the evidence as a whole, including each of the E2(a) factors enumerated in the Adjudicative Guidelines of the Directive.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE H: (DRUG INVOLVEMENT):	AGAINST APPLICANT
Sub-para. 1.a:	AGAINST APPLICANT
Sub-para. 1.b:	FOR APPLICANT
Sub-para. 1.c:	AGAINST APPLICANT
Sub-para. 1.d:	AGAINST APPLICANT

Conclusions

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge

