



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



In the matter of:)	
)	
)	ADP Case No. 08-10196
SSN:)	
)	
Applicant for Public Trust Position)	

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

March 31, 2010

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant completed a Questionnaire for Public Trust Positions (SF-85P) dated April 18, 2008. On August 27, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating trustworthiness concerns arising under Guideline H (Drug Involvement). The action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); Department of Defense Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); and the revised guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2005.

In an undated response received on September 22, 2009, Applicant admitted all nine allegations set forth in the SOR and requested a hearing. DOHA assigned the case to me on November 16, 2009. Department Counsel and Applicant agreed to a hearing date of January 12, 2010. A notice of hearing was issued to that effect on December 22, 2009. I convened the hearing as scheduled. Applicant gave testimony and offered six documents, accepted into the record without objection as exhibits (Exs.) A-F. Three witnesses appeared on his behalf. Applicant was given through January 25, 2010, to submit any additional documentation. Department Counsel offered four

documents, admitted as exhibits (Exs.) 1-4 without objection. The transcript (Tr.) of the proceeding was received on January 19, 2010. On January 22, 2010, Applicant submitted two documents through Department Counsel, who forwarded them without objection on January 26, 2010. They were received on February 1, 2010, and accepted into the record as Exs. G-H. The record was then closed. Based on a review of the testimony, submissions, and exhibits, I find Applicant met his burden regarding the drug involvement trustworthiness concerns raised.

Findings of Fact

At the time of the hearing, Applicant had recently turned 26. He is a professional writer working for a government contractor. He has worked for his present employer for about two years and is seeking to occupy an automated data processing (ADP) position designated ADP I/II/III. In 2007, Applicant received a bachelor's degree in marketing. He is single.

During high school, Applicant began smoking cigarettes. Then in October 2001, as a 16 or 17 year old upperclassman, he tried marijuana "as a one time thing."¹ He also experimented with alcohol. Despite these "silly decisions," he entered his senior year with a 3.95 grade point average, an SAT score of about 1350, and was ranked seventh in his class. As class president in his sophomore and junior years, he was considered an exemplary student and leader.² During his senior year, he experienced a personal crisis. Despite his strong religious faith, he felt conflicted with desires for popularity, girls, and a "partying" lifestyle.³ Temptation prevailed, and those desires distracted him from his academic, personal, and religious goals. He even sold some of his marijuana to friends, a practice that continued in college.⁴

By the time he entered college in September 2002, he was "exhausted" from being an exemplary student and developed "a complete disregard" for rules.⁵ His partying continued and his behavior became erratic. He used marijuana daily and sometimes imbibed alcohol. His growing use of cigarettes started him on the path to a pack a day nicotine habit. When he discovered his girlfriend of over two years had cheated on him with a friend, he felt betrayed and sought total escape. He drank alcohol alone. He bought and tried hallucinogenic mushrooms four or five times between 2002 and 2003, and sold one to a friend. As an underclassman, he tried opium once. Between 2002 and 2007, he used cocaine that he purchased about 10 times and, at times, shared the drug with friends. He lost all motivation to concentrate on his studies and his life. He became sexually promiscuous. He developed a sense of rage, and started getting into fights. As a result, he suffered several serious injuries. He

¹ Tr. 25.

² Tr. 25-28.

³ Tr. 31.

⁴ Tr. 32, 75.

⁵ Tr. 34.

noted that “I was not seeing anything clearly, and my heart was really ugly. I was in darkness a lot.”⁶

Meanwhile, Applicant’s mother, a single mother employed as a school teacher and guidance counselor, continued to pay for him to attend a prestigious university. She toiled to keep him in school, while he failed classes and partied. He was cited for possession of a fake identification card outside a local nightclub before he was asked to take a leave of absence from school in 2003.⁷ The university urged him to reconsider his academic and personal future and seek counseling, which he completed with a university psychiatrist.⁸ In December 2003, while on an out-of-state road trip, he was arrested and charged with possession of marijuana during a traffic stop.⁹ The charge was ultimately dismissed. In March 2004, he got intoxicated, scaled a fire escape, and damaged a door in an effort to relieve himself.¹⁰ He was arrested and charged with marijuana possession, illegal entry, and destruction of property. He pled guilty to destruction of property and was sentenced to a year of probation and 20 hours of community service.¹¹ Being underage, he was advised to refrain from alcohol. He was also subjected to weekly drug testing, which he passed.¹²

Apprised of the changes in Applicant’s life, his family sent him abroad to an idyllic region in which they had relatives in order to put his life into perspective. He rested in Europe, but also indulged in alcohol and used cocaine on a few occasions. He returned in 2004 refreshed. He returned to his college town, prepared to go back to his part-time restaurant work, but he was told he was no longer needed. He was disappointed at this development and his mother feared he would regress to his former lifestyle. She advised him to consult his college’s dean. Knowing of Applicant’s struggles and understanding his current need for structure, the dean had him re-enrolled in classes that week. Despite his return, he was “consumed” with needing to feel accepted.¹³ His probation for the December 2003 incident commenced in October 2004. He refrained from buying and using drugs until his probation ended.

⁶ Tr. 36.

⁷ Tr. 78-79.

⁸ Tr. 107, 109.

⁹ Tr. 82-84.

¹⁰ Tr. 89-90.

¹¹ Tr. 101. Applicant’s probation ran from October 2004 through September 2005.

¹² Tr. 101.

¹³ Tr. 41.

During the summer of 2006, Applicant argued with his mother, who he reveres as “a saint.” The argument drove her to tears.¹⁴ That night, he felt that he had hit rock bottom and he began a struggle to regain his faith.¹⁵ He returned to college in the autumn and gradually started to study, mend his ways, make repentance for his old life, and behave like a responsible adult.¹⁶ By March 2007, he had ceased using cocaine and purchasing all illegal drugs.¹⁷ In July 2007, after graduating from college, he became sexually abstinent and started using drugs infrequently. In October 2007, he returned to his church. For one last time on February 14, 2008, he used marijuana, a drug which, at that point, he rarely used.¹⁸ That night, he decided to quit using all illegal drugs.¹⁹ He has not used any illegal drugs since that time. In August 2008, in a final effort to lead a dependency-free life, he accepted a challenge from his pastor to conquer his dependence on cigarettes. Soon thereafter, he apparently did so by going “cold turkey.” He turned his attention to work, where he was soon lauded for his “outstanding perseverance, initiative, and intellectual creativity and . . . great analytical gift.”²⁰ He returned to his faith with vigor, regularly attending church services, tithing, becoming a Sunday school teacher, and joining the church band.²¹ He also sought informal counseling through regular meetings with his pastor regarding his old lifestyle, and his faith. He also met with the church’s youth pastor to help him with personal “accountability.”²²

Today, Applicant feels he has been given a second chance at living a clean, moral life.²³ He does not associate with people who use drugs. He also avoids situations and venues where drugs might be present.²⁴ He vows that he “will never use drugs again.”²⁵ He signed a notarized statement noting, “I hereby declare that I will

¹⁴ Tr. 43. In 2002, when he was a teen, Applicant had a fight with his mother in their car while outside an airport during Thanksgiving break. A passing police officer saw the fracas and Applicant was cited for disorderly conduct. The charge was dismissed. Tr. 78.

¹⁵ Tr. 44.

¹⁶ Tr. 46-47.

¹⁷ Tr. 110.

¹⁸ Tr. 185.

¹⁹ Tr. 111. It was also the last time Applicant was around anyone using illegal drugs.

²⁰ Tr. 49; Ex. D (Recommendation).

²¹ Tr. 52.

²² Tr. 54-55. Applicant’s pastor “pushed” him to quit smoking cigarettes after he had already quit his other vices.

²³ Tr. 55-57.

²⁴ Tr. 112.

²⁵ Tr. 115.

completely abstain from any and all drug abuse. If any violation occurs, I understand that my position of public trust will be automatically revoked.” To handle stress, he relies on his faith and what he learned from his past experiences.²⁶ Applicant also finds pleasure in his music, piano, guitar, working out, church activities, and prayer.²⁷ He attributes his turnaround “to God, but [also] maturity.”²⁸ He regrets how long it took him to mature and regain his confidence. He has reconciled with his mother, with whom he speaks on the telephone “practically every day.”²⁹

At work, Applicant is highly regarded and earns approximately \$52,000. When he was initially hired, his position was ill-defined. The way he has developed it has since established “the standard by which everybody else will be gauged.”³⁰ His employer has an anti-drug policy. Applicant recently started his own side-line venture teaching piano to children, a calling he enjoys. He hopes to train other teachers in his method and eventually out-source them to teach other children.³¹ His youth pastor, who has followed Applicant’s progress over the past two-and-a-half years and knows about most of Applicant’s past problems, noted the personal growth Applicant has shown since they met. He is impressed with Applicant’s movement from self-absorption to caring for others.³² In light of Applicant’s past drug use and brushes with the law, the youth pastor finds the Applicant of today to be a role model whose ability to put his past life behind him through faith can help “influence others.”³³ With regard to transparency, the youth pastor rates Applicant a nine.³⁴ An associate who directs an outreach organization helping troubled youth befriended Applicant. He has prayed with Applicant and mentored him. He finds Applicant highly trustworthy, and has entrusted him to inspire youth to also use faith to overcome adversity.³⁵

With regard to his past drug use and its repercussions, Applicant is highly contrite. He laments the protracted period it took him to overcome a period of rebellion, gain maturity, and take responsibility for his actions. He is now guided by his faith and his responsibilities as a role model for youth. He feels that he is now held to a higher

²⁶ Tr. 117.

²⁷ See, e.g., Tr. 119.

²⁸ Tr. 118.

²⁹ Ex. G (Parent’s letter, dated Jan. 19, 2010).

³⁰ Tr. 133-135. (Applicant’s supervisor also praised the follow-through, professionalism, character, and trustworthiness Applicant has demonstrated since he was hired in early 2008.)

³¹ Tr. 65-66.

³² Tr. 145-147, 159-161.

³³ Tr. 160-161.

³⁴ Tr. 148.

³⁵ Tr. 168-172, 174-176.

standard, strives to meet the goals set forth in his faith, and endeavors to do what is just and right.³⁶

Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.”³⁷ “The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person’s loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security.”³⁸ The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.³⁹

When evaluating an applicant’s suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AG. 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 overarching adjudicative goal is a fair, impartial, and commonsense 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 [sensitive] 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, an 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 trustworthiness decision.

³⁶ Tr. 186.

³⁷ See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.

³⁸ See Regulation ¶ C6.1.1.1

³⁹ See Regulation ¶ C8.2.1.

A person who seeks access to sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Section 7 of Executive Order (EO) 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.”⁴⁰

Analysis

Under Guideline H, 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.⁴¹ “Drugs” are defined as mood and behavior altering substances, and include 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 inhalants and other substances.⁴² “Drug abuse” is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.⁴³

Applicant admitted using marijuana between about 2001 and February 14, 2008. He admitted selling the substance on some occasions to friends. He bought and used hallucinogenic mushrooms four or five times between 2002 and 2004. He sold such a mushroom on one occasion during that period. He used cocaine about 10 times between 2002 and March 2007. He bought and tried opium once in about 2002. In 2003 and in 2004, he was arrested for possession of marijuana. These admissions are sufficient to raise Drug Involvement Disqualifying Condition AG ¶ 25(a) (“any drug abuse”) and AG ¶ 25(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia).

At the time of the hearing, Applicant had recently turned 26. He admitted the drug abuse detailed above. After college, his marijuana use diminished until he gave up all drugs in February 2008, over two years ago. Of the illegal drugs at issue, his use of

⁴⁰ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

⁴¹ AG ¶ 24.

⁴² *Id.* at ¶ 24(a)(1-2).

⁴³ *Id.* at 24(b).

marijuana was, at times, frequent. His drug use developed as a part of a stage of unbridled rebellion that started at the end of high school, when he was an exemplary teenager and student, and continued until his return to his religious faith gradually led him to quit all illegal drug use in February 2008. By August 2008, he extended his personal turnaround and return to his religious faith by successfully completing the highly difficult task of quitting a pack-a-day cigarette habit. He has been drug-free for over two years. Since his complete return to the core of his faith, he has eschewed drugs, those who use them, and venues in which they are present. Applicant signed a statement with automatic revocation of any trustworthiness determination for any violation. He has become intensely involved with his church and community. He now serves as a youthful role model for personal salvation and redemption through faith. His free time is now devoted to his religion, working out, and music, an appreciation and talent he endeavors to share with children. He has matured considerably in the past two years, a significant period of time for a man in his mid-20s who graduated from undergraduate school in 2007. His religious and professional mentors depict him as diligent, trustworthy, and reliable. Applicant also has embraced his new life and adheres to society's and his religion's rules.

The fact that Applicant used drugs for a significant portion of his life cannot be denied, nor does he deny his past. Instead, he credibly demonstrates appropriate contrition over his past drug use and its legal and interpersonal repercussions. At the same time, he points to what he terms his "dark" stage as the basis for all subsequent maturation, his personal turnaround, and his return to faith. There is no evidence that the rebellion or rage he once experienced is still part of his character. Instead, Applicant demonstrates superior qualities with regard to his priorities, his appreciation of religious and civil laws and rules, his professional judgment and talents, and his reliability. Such qualities have not only impressed his employer, but also his religious mentors, who proudly tout him as a model for the power of personal redemption and improvement. In light of all of the preceding, and in the absence of any evidence Applicant will again lose his present faith or level of maturity, Drug Use Mitigating Conditions AG ¶ 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) and AG¶ 26(b) (a demonstrated intent not to abuse and 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) apply.⁴⁴

As noted, Applicant intends to remain drug free, an act he first demonstrated by foreswearing illegal drugs over two years ago. Two years are significant for a man of his

⁴⁴ Ex. H (Applicant's statement, dated Jan. 22, 2010). The Government argued that the Applicant's statement, "merely states [Applicant's] future intentions. It does not demonstrate them" in light of Applicant's drug use before and after his 2003-2004 probation. It does, however, clearly set forth a current expression that he will "completely abstain from any and all drug abuse" and notes that "if any violation occurs, I understand that my position of public trust will be automatically revoked." This statement substantially meets the unqualified criterion noted in AG ¶ 26(b)(4) as one of four enumerated examples of "a demonstrated intent not to abuse drugs in the future."

age. In light of the mitigating conditions raised, drug involvement concerns are mitigated.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the circumstances. An 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 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, as well as the "whole-person" factors. Here, Applicant used and purchased illegal drugs. While his illegal use of hallucinogenic mushrooms, cocaine, and his isolated experimentation with opium was comparatively fleeting, he abused marijuana for seven of his 26 years.⁴⁵ His phase of drug use was brought on as a form of youthful rebellion, against his parent, his religion, and his role as an exemplary teen and student.⁴⁶ His collegiate pursuit of sensual pleasure and self-absorption became all consuming, adversely affecting his relationships, studies, and health.⁴⁷ During this stage, Applicant broke the law and abused the parameters of his probation. He eventually hit rock bottom near the end of his college years when he realized the pain his behavior was causing his mother, whose self-sacrifice Applicant ultimately appreciated. After college, he gradually pulled himself together, eschewed drugs and other destructive traits, as he matured, returned to his faith, and focused on adult responsibilities.⁴⁸ He no longer associates with those who use drugs or frequents venues where drugs are used. He now inspires others to

⁴⁵ AG ¶ 2(a)(1), AG ¶ 2(a)(3)-(5).

⁴⁶ AG ¶ 2(a)(2), AG ¶ 2(a)(7).

⁴⁷ AG ¶ 2(a)(4), AG ¶ 2(a)(5).

⁴⁸ AG ¶ 2(a)(6)-(7).

overcome personal adversity through faith.⁴⁹ He has been entrusted to work with children, extending his interaction beyond Sunday school teaching and outreach mentoring to giving piano lessons.

In the two years since Applicant has been drug-free, he has greatly matured and demonstrated significant personal progress in the area of personal rehabilitation. He has impressed his employer with his skills and reliability, earned the trust of his religious and social mentors, mended his relationship with his mother, remained drug-free, and maintained his resolve to follow the dictates of his faith. While two years is a short period, it is a significant period in the life of one so young. Moreover, both Applicant's personal resolve and his ability to change his behavior have been successfully demonstrated in an analogous context. He successfully and abruptly quit a heavy cigarette habit he had maintained for almost a decade without the need for a prescription drug, nicotine withdrawal device, or other program. He did so solely in response to a challenge from his pastor, despite the fact that nicotine is generally acknowledged as highly addictive and its successful cessation is recognized as an extraordinarily difficult feat. This clear demonstration of determination, commitment and personal resolve, in tandem with Applicant's strong devotion, his reliance on faith, and his network of effective mentors, support his expressed intention and dedication to remain drug-free.⁵⁰ There is no indication he will again lapse in favor of illegal drug use. The evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a public trust position. Given all these factors, he has mitigated drug involvement trustworthiness concerns.

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant

⁴⁹ AG ¶ 2(a)(8).

⁵⁰ AG ¶ 2(a)(9).

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for access to sensitive information.

ARTHUR E. MARSHALL, JR.
Administrative Judge