



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



In the matter of:

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ISCR Case No. 09-00643

Applicant for Security Clearance

Appearances

For Government: Braden Murphy, Esquire, Department Counsel

For Applicant: *Pro se*

February 23, 2010

Decision

O'BRIEN, Rita C., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guideline for drug involvement. Accordingly, his request for a security clearance is granted.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on July 2, 2008. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

¹ Required by Executive Order 10865, as amended, and DoD Directive 5220.6 (Directive), as amended.

On June 23 2009, DOHA issued to Applicant a Statement of Reasons (SOR), which specified the basis for its decision: security concerns addressed in the Directive under Guideline H (Drug Involvement) of the Revised Adjudicative Guidelines (AG).²

Applicant submitted a notarized, undated Answer, which was received by DOHA on July 13, 2009. Applicant admitted all allegations under Guideline H and Guideline E and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on August 31, 2009, and the case was assigned to me on the same day. DOHA issued a Notice of Hearing on September 9, 2009. I convened the hearing as scheduled on October 6, 2009. Government counsel offered three exhibits, marked as Government Exhibits (GE) 1 through 3, which were admitted without objection. I took administrative notice of two documents provided by the government, identified as Hearing Exhibits I and II. Applicant testified on his own behalf and presented the testimony of four witnesses. He also offered seven exhibits, marked as Applicant Exhibits (AE) A through G, which were admitted without objection. DOHA received the transcript on October 13, 2009.

Findings of Fact

Applicant's admissions in response to the SOR are incorporated herein as findings of fact. After a thorough review of the pleadings, Applicant's response to the Statement of Reasons, and the record evidence, I make the following additional findings of fact.

Applicant, who is 23 years old, was born in Russia, and immigrated to the United States in 1997 at the age of 11. He became a naturalized U.S. citizen in 2003. He earned a bachelor's degree in electrical engineering from a U.S. university in May 2008. Applicant has been employed by the same defense contractor since graduating college, and is currently lead engineer on a telecommunications project. Applicant is single and has no children. He has a girlfriend, who resides in Russia. (GE 1, 2; Tr. 17-23).

In 2000, when Applicant was about 14 years old, he began using marijuana because of curiosity and peer pressure. He used it in his freshman year in high school, but more heavily -- several times per week -- during his sophomore year. He decreased his use to once per week during his senior year. He continued using marijuana while in college, again smoking it most heavily during his second year, when he used it two to three times per week. In December 2006, he became involved in boxing and decreased his use in order to become more physically fit. During his junior and senior years, his use decreased to about once every two to three months. Applicant estimates his total use

² Adjudication of this case is controlled by the Revised Adjudicative Guidelines, approved by the President on December 29, 2005, which were implemented by the Department of Defense on September 1, 2006. The Revised Adjudicative Guidelines supersede the guidelines listed in Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

between 2000 and 2007 as 650 times. Applicant also purchased marijuana for his own use, and sometimes sold it to friends. He testified that he never sold it for profit. Applicant was aware when he used marijuana that it was illegal. Applicant and his friends experimented with growing marijuana. They did not smoke the plant, but used parts of the plant in brownies, and then destroyed it. Applicant has never repeated this activity. Applicant last used marijuana in December 2007, about six months before finishing college. (GE 2; Tr. 23, 26-30, 36, 54)

In 2003, while in high school, Applicant used cocaine for the first time. Between 2003 and 2007, he used it approximately nine times, in social settings. He and his friend sometimes purchased it. Applicant last used cocaine in May 2007. He also used other illegal substances including psychedelic mushrooms (psilocybin), inhalants, and prescription drugs. He tried mushrooms one time. He used the inhalant nitrous oxide less than 10 times between 2003 and 2006. Applicant also sometimes shared Valium, Vicodin, or Adderall when they were prescribed for his friends. Although they were not prescribed for him, he used these painkillers about ten times between 2003 and 2007. (GE 1, 3; Tr. 30-38, 40-42)

Occasionally, Applicant talks with two friends by telephone with whom he used drugs in the past. They do not live in the same city as Applicant. They no longer use illegal drugs, nor does Applicant's current roommate. Applicant stopped using illegal drugs about six months before he graduated college because he "got sick of them and I was like, you know, it's time for a new and better life." He has no intent to use illegal drugs in the future, and testified that he is, "basically done with that...I'm never going to revisit that." (Tr. 50) Drug tests were administered to Applicant by prospective employers in February and June 2008. He passed both tests. He has never had drug counseling or participated in a drug treatment program. Applicant disclosed his drug use on his security clearance application, during his security interview, and in his interrogatory responses. (GE 1, 2, 3; Tr. 48-53, 56)

Applicant's current supervisor submitted a letter of reference. After supervising Applicant for one-and-one-half years, he noted that Applicant shows good judgment, and is responsible and trustworthy. He volunteers for additional tasks, and on one project, assumed the leadership role when the leader was not available. He has been with Applicant at social events and found that Applicant was discreet in his behavior, and he showed good judgment when discussing professional matters in social settings. He recommends Applicant be granted a security clearance (AE A).

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,

and consideration of the pertinent criteria and adjudication policy in the Revised AG.³ Decisions must also reflect consideration of the “whole person” factors listed in ¶ 2(a) of the Guidelines.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline H (Drug Involvement).

A security clearance decision is intended only to resolve the questions of whether it is clearly consistent with the national interest⁴ for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the government’s case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁵ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or his own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the government.⁶

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

³ Directive. 6.3.

⁴ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵ See *Egan*, 484 U.S. at 528, 531.

⁶ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

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.

Of the eight disqualifying conditions listed at AG ¶ 25, the following are relevant:

- (a) any drug abuse; and
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant admits to illegally using marijuana, cocaine, inhalants, mushrooms, and non-prescribed medications. He sometimes purchased the marijuana and cocaine. He also experimented with growing marijuana. He used marijuana over a seven-year period, beginning when he was 14 and ending when he was 22. Applicant's marijuana use was frequent, long-standing, and demonstrated poor judgment and willingness to break the law. Both disqualifying conditions apply.

AG ¶ 26 includes two relevant mitigating conditions:

- (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 any 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.

Between the ages of 18 and 22, Applicant used cocaine, mushrooms, inhalants and painkillers infrequently, averaging about twice per year in each case. His use of marijuana is more problematic, because it was frequent and long-standing. However, Applicant credibly testified that he ended his use in December 2007, more than two years ago. Since then, he has been working steadily at a full-time, professional position. According to his supervisor, he is performing responsibly, and is trustworthy and

dependable. These facts support a finding of current trustworthiness and reliability. AG ¶ 26(a) applies.

Mitigation is also available under AG ¶ 26(b) (1) through (3). Applicant no longer associates with drug users. He does not live in the same city as his friends with whom he used drugs. He does sometimes speak with these two friends by telephone, but they also have ended their illegal drug use. He is no longer in the college environment where he used drugs, and his current roommate does not use drugs. Applicant has abstained from illegal drugs for more than two years, and both of the drug tests administered by employers in 2008 were negative. His conduct demonstrates a commitment to avoiding illegal drug use. AG ¶ 26(b) applies.

Whole Person Analysis

Under the whole person concept, an administrative judge must evaluate the Applicant's security eligibility by considering the totality of the 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guideline and the whole person concept. I considered the potentially disqualifying and mitigating conditions under the guideline in light of all the facts and circumstances surrounding this case.

Applicant used illegal drugs between the ages of 14 and 22. Most were used on an occasional basis, but his marijuana use was frequent and long-standing. He was motivated by a desire to fit in with his friends. He ended his marijuana use in December 2007, and has refrained from using illegal drugs for more than two years. He decided on his own to end his drug use when he realized that he was finishing college, entering the work world, and wanted to change his lifestyle. He fully disclosed his drug use during the security clearance process. He now holds a responsible, full-time job where he has performed dependably for the past one-and-one-half years. His decision to end his illegal drug use, as well as his demonstrated on-the-job reliability, show increased maturity and reflect positively on his current trustworthiness.

Overall, the record evidence satisfies the doubts raised about Applicant's suitability for a security clearance. for all these reasons, I conclude applicant has mitigated the security concerns arising from the drug involvement guideline.

Formal Findings

Paragraph 1, Guideline H: FOR APPLICANT

Subparagraphs 1.a. – 1.f.: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to allow applicant access to classified information. Applicant's request for a security clearance is granted.

RITA C. O'BRIEN
Administrative Judge