



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



In the matter of:)
)
) ISCR Case No. 09-01168
SSN:)
)
Applicant for Security Clearance)

Appearances

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

March 3, 2010

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 9 July 2009 the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H.¹ Applicant answered the SOR 31 July 2009 and requested a hearing. DOHA assigned the case to me 31 August 2009 and I convened a hearing 22 September 2009. DOHA received the transcript (Tr.) 30 September 2009.

Findings of Fact

Applicant admitted the SOR allegations. He is a 23-year-old business operations analyst employed by a defense contractor since August 2008. He has not previously held a clearance.

¹DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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 (RAG) effective within DoD on 1 September 2006.

Applicant used marijuana with varying frequency from about November 2002 to July 2008. He began using marijuana during his junior year in high school, but most of his marijuana use occurred during college. He used after college in June and July 2008. During his marijuana use, he occasionally contributed to its purchase. He stopped using marijuana in July 2008, just before being offered a job by his current employer. He decided that marijuana use was inconsistent with his career goals. Before then, he had been relatively unfocused about his career path.

Applicant also experimented with hallucinogenic mushrooms in April and September 2008. In September 2008, he realized almost immediately how stupid his conduct was. He has not used mushrooms since.

In 2008, Applicant had an injury and unrelated surgery for which he was given two prescription painkillers. He and his friends experimented with smoking one of the painkillers and inhaling the other. In March 2009, while on vacation with a friend, he used a prescription stimulant (routinely used to treat attention deficit disorder) to help him stay awake while going out to party.

When Applicant received his company security brief and completed his clearance application in September 2008, he realized that his past drug use could be a security concern. He immediately went to his supervisor to inform him of the drug abuse history, so the company would not continue to invest time and money in him if the drug abuse was considered disqualifying for his clearance. His supervisor told him to simply disclose the full extent of his drug use. Applicant. He followed that advice and fully disclosed the extent of his drug use on his clearance application (GE 1). His supervisor confirmed that Applicant was completely forthcoming about his drug use, as well as praising his work quality and his safeguarding of proprietary information.

Applicant lives in a group house with three women, who do not use marijuana, and two men, who do. One of the men is also a college friend.

Policies

The revised Adjudicative Guidelines (RAG) list factors to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in RAG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline H (Drug Involvement).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter 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 judgement, reliability, and trustworthiness of those who must protect national interests as their 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.²

Analysis

The government established a case for disqualification under Guideline H, by demonstrating Applicant's use of marijuana and other drugs between November 2002 and March 2009.³ However, Applicant has only partially mitigated the security concerns. Regarding his experimental use of prescription painkillers, adderall, and hallucinogenic mushrooms, he demonstrated that the use was under circumstances unlikely to recur,⁴ and further demonstrated intent to not abuse these drugs in the future.⁵ While Applicant's use of these drugs is fairly characterized as "recent," this term has less meaning under the new adjudicative criteria, where the corresponding language "the behavior happened so long ago. . ." [¶ 26.(a)], is used in the disjunctive with language that clearly applies to Applicant. In addition, his experimental drug abuse was infrequent. Nevertheless, Applicant failed to mitigate the security concerns raised by this drug abuse. Notwithstanding that college may be a more relaxed environment than the workplace, Applicant's abuse of these drugs began when he was a second-semester senior, at a time when he should have begun thinking of his life after college. Yet, he tried mushrooms and non-standard uses of prescription medication, and let his friends try those non-standard uses as well. Even after leaving college, and having made the

²See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

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

⁴¶ 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 [Emphasis supplied];

⁵¶ 26.(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.

decision to cease marijuana use, he used mushrooms again in September 2008, after being hired by his employer, if not after completing his clearance application and security briefing. Finally, after his security briefing, and with full knowledge of the implications for his clearance, he abused adderall in March 2009.

Applicant also failed to mitigate the security concerns over his marijuana use. That use was regular, if not frequent. Like his experimental use of other drugs, Applicant's use of marijuana was recent. Unlike that use, his marijuana use was not infrequent overall, and not under unusual circumstances. Further, his continued residence with marijuana users raises concern. He has not dissociated himself from drug using associates and contacts, changed or avoided environments where drugs are used, or had an appropriate period of abstinence. He has executed no signed statement of intent to refrain from marijuana use. The fact that he lives with three female housemates who do not use marijuana does not mitigate the fact that he lives with two other male housemates who do. Without some corroboration of either his abstention or his refusal of offered marijuana, I do not consider his year-plus abstinence from marijuana use an appropriate period of abstinence. Accordingly, I resolve Guideline H against Applicant

Additionally, this conclusion is completely consistent with a whole person analysis. Although the quality of his work, his handling of proprietary information, and his recognition that the workplace is a different environment from college—with different expectations and responsibilities—support his eligibility for access to classified information, these factors do not overcome the negative inferences of his marijuana use and experimental abuse of drugs after entering the workforce.

Formal Findings

Paragraph 1. Guideline H: AGAINST APPLICANT

Subparagraph a-f: Against Applicant

Conclusion

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 a security clearance for Applicant. Clearance denied.

JOHN GRATTAN METZ, JR
Administrative Judge