



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-03462
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

April 2, 2010

Decision

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

Applicant completed a security clearance application (e-QIP) dated October 16, 2008. On November 23, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising under Guideline H (Drug Involvement). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended, Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Regulation), and the Adjudicative Guidelines (AG) effective for SORs issued after September 1, 2006.

On December 31, 2009, Applicant responded to the SOR. He admitted all four allegations set forth in the SOR and requested a hearing. DOHA assigned the case to me on February 5, 2010. Department Counsel and Applicant agreed to a hearing date of March 4, 2010. A notice of hearing was issued to that effect on February 18, 2010. I convened the hearing as scheduled. Department Counsel offered two documents, admitted as exhibits (Exs.) 1 and 2 without objection. Applicant gave testimony and offered 12 documents, accepted into the record without objection as exhibits (Exs.) A-

L.¹ One character witness appeared on his behalf. Applicant was given through March 15, 2010, to submit any additional documentation. The transcript (Tr.) of the proceeding was received on March 12, 2010. No additional documents were submitted for consideration and the record was closed on March 26, 2010. Based on a review of the testimony, transcript, and exhibits, I find Applicant met his burden mitigating the drug involvement security concerns raised.

Findings of Fact

Applicant is a 30-year-old calibration engineering assistant working for a government contractor. He has worked for his present employer since January 2008. In 2002, he received an associate's degree in applied sciences. He has worked primarily in the technology field since that time. In December 2008, he earned a bachelor of science degree in electrical engineering. Applicant is single and has no children.

In high school, which he attended between 1993 and 1997, Applicant tried marijuana, an illegal drug, with a friend who provided the drug. He used it a second time before high school graduation. Between high school graduation and his completion of community college in 2002, he used marijuana two more times.

In 1999, as he was finishing his community college associate's degree, Applicant acquired some marijuana. He sold some to a friend. Months later, the friend was arrested and gave Applicant's name as the source of the drug. Applicant was arrested, questioned, and charged with the criminal sale of marijuana. Applicant appeared in court on the charge, but the matter was adjourned conditional of dismissal.² No punishment was imposed.³

Between 1999 and December 2007, Applicant used marijuana two last times before quitting its use.⁴ In sum, he used the drug six times. It is the only illegal drug he ever used, it was used simply for "fun," and he has not used marijuana since.⁵ Applicant no longer associates with the friend who informed on him or any other acquaintances

¹ Tr. 21. In the SOR, allegation (¶ 1.c reflects an admission by Applicant related to the sale of marijuana in 1995. During the hearing, Applicant corrected himself, noting that the incident occurred in 1999. (Transcript at 21) The correction was noted and the allegation was amended accordingly.

² Tr. 26. Applicant was under 21 years of age at the time. He described an adjournment conditional of dismissal as meaning the charge was dropped if he did not "get in trouble for a certain period of time, I don't know how long it was. . . ."

³ Ex. 2 (Interrogatories, Investigation Interview, dated Dec. 9, 2008).

⁴ Tr. 24.

⁵ *Id.*

who use drugs, although he may see them in town on occasion.⁶ He also does not frequent venues where people engage in drug use.⁷

On December 9, 2008, Applicant was interviewed by an investigator. His past marijuana use was candidly discussed. The interviewer noted that “[Applicant] does not intend on pursuing drugs for use of sale.⁸ He cannot state, without question, that he will never use marijuana again.” In explaining why he thought the investigator arrived at this assessment, Applicant stated that he initially was taken aback at the question. He explained that he did not know how to respond, so he “just said that, you know, I don’t intend to do that. . . .”⁹ He also testified that he would willingly swear and affirm that he would never use marijuana again.¹⁰ Applicant then repeatedly affirmed without equivocation that he would “never do it again.”¹¹ In making this affirmation, he testified that, “I’m 30 years old now, and I’m not interested in that any more.”¹²

Applicant submitted a signed statement confirming his intent to abstain from using drugs in full understanding that any violation may result in automatic revocation of any security clearance granted.¹³ He also submitted the results of a recent drug screening. It showed that there was no presence of drugs in his system.¹⁴

At work, Applicant has earned commendable performance ratings. He is mentored by his manager and a senior peer. He is about to enter a graduate program at a nearby college in the hopes of expanding his engineering expertise into technology-related management.¹⁵ Applicant performs charity work through his employer, which involves working with children.¹⁶ He plans to do more volunteering within his community.¹⁷ In his spare time, he enjoys hiking, camping, and photography. He and his brother like to work on computers. He does not now, nor has he ever felt,

⁶ Tr. 28.

⁷ *Id.*

⁸ The phrase “use of sale” apparently denotes the pursuit of drugs in order to sell them. It does not appear to be a typographically erroneous transcription of the word “or.”

⁹ Tr. 29.

¹⁰ *Id.*

¹¹ Tr. 30-33, 49.

¹² Tr. 31.

¹³ Ex. B (Statement of Intent, undated)

¹⁴ Tr. 35; Ex. C (Drug Screening, dated Feb. 23, 2010).

¹⁵ Tr. 41-42.

¹⁶ Tr. 37.

¹⁷ Tr. 38.

the need or counseling.¹⁸ He has experienced no urges to use it again.¹⁹ At the hearing, his father stated that Applicant never showed any evidence of drug use. Applicant's past drug use does not affect Applicant's father's opinion that Applicant is a trustworthy and focused young man.²⁰

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. 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. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all 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." 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.

The government must present evidence to establish controverted facts alleged in the SOR. 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. . . ." ²¹ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.²²

A person who seeks access to classified 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 classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally

¹⁸ Tr. 40-41.

¹⁹ Tr. 41.

²⁰ Tr. 46-47.

²¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

²² ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”²³ Any reasonable doubt about whether access to sensitive information should be allowed must be resolved in favor of protecting such sensitive information.²⁴

Based upon consideration of the evidence, Guideline H (Drug Involvement) is the most pertinent to this case. Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

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.²⁵ “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.²⁶ “Drug abuse” is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.²⁷

Applicant admitted illegally using marijuana six times between the mid-1990s and December 2007. He admitted having purchased the substance during that time. He also admitted being arrested and charged for the sale of marijuana in 1999. These admissions give rise to Drug Involvement Disqualifying Conditions 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 was 30 years old. His drug use started as a high school teenager and ended over two years ago. His drug use was sporadic and highly infrequent. Since quitting drugs in December 2007, Applicant earned a bachelor’s

²³ *Id.*

²⁴ *Id.*

²⁵ AG ¶ 24.

²⁶ *Id.* at ¶ 24(a)(1-2).

²⁷ *Id.* at ¶ 24(b).

degree in a competitive technological field and started his current employment. His performance at his present job has been commended. He has gained the confidence and trust of his professional peers. He is now about to enter a graduate program in order to expand his knowledge base and professional opportunities. Through his employer, he has participated in community volunteerism and outreach through work with children. His spare time is spent with family and enjoying healthy outdoor activities.

After being free from drug use for over two years, Applicant has had no urge to return to drugs, nor does he have the intent to do so. He does not purposefully associate with those who use drugs, nor does he frequent venues where drugs are used. He credibly and plausibly explained why an investigator's notation that his intent to refrain from drug use appeared to be qualified. Applicant repeatedly affirmed his intent not to use drugs in the future. Demonstrating maturity, he flatly stated that, at age 30, he is no longer interested in them. He signed a statement of intent to refrain from drugs with a clause providing for the automatic revocation of any security clearance granted should he return to drugs. Given the above considerations, 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. In light of the conditions raised, drug involvement security 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. On six occasions over about a decade, spanning from his teens to his late 20s, Applicant used marijuana, an illegal drug. He purchased the drug on occasion and, in 1999, sold the substance in violation of the law. His use of the drug was simply for amusement and socialization, it was not to quench an addiction. In 2007, he realized he had outgrown his drug use and he quit. He has not had any urges to use marijuana or any other drug since that time. He has distanced himself from individuals and venues associated with drugs. Applicant now spends his free time in pursuit of healthier activities, work-related assignments, and academic studies. Given his clearer appreciation of the illegal nature of drugs, its potential impact on his health and career, and his more mature outlook, it is highly unlikely he will return to drug use.

In the two years since quitting drugs, Applicant has demonstrated notable academic, professional, and social achievements. Now 30, he has matured considerably. His future focus is strictly depicted in terms of professional success and continued scholastic study. Given the diligence and commitment he has shown at work and at school, as well as his effortless cessation of a drug he only rarely used, there is little likelihood that he would choose to return to drugs and jeopardize either his current lifestyle or professional standing. Absent any indication he will again lapse in favor of illegal drug use, and in light of his mitigation of drug involvement security concerns, the evidence leaves me without questions or doubts as to his eligibility and suitability for a security clearance. Clearance granted.

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

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 a security clearance. Clearance granted.

ARTHUR E. MARSHALL, JR.
Administrative Judge